UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1992/5
21 January 1992

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS
Forty-eighth session
Item 3 of the provisional agenda

ORGANIZATION OF THE WORK OF THE SESSION: ASSISTANCE TO GUATEMALA IN THE FIELD OF HUMAN RIGHTS

Report by the independent expert, Mr. Christian Tomuschat, on the situation of human rights in Guatemala, prepared in accordance with paragraph 11 of Commission resolution 1991/51

GE.92-10153/4262B

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INTRODUCTION

1. The Commission on Human Rights has been considering the situation of human rights in Guatemala since its thirty-fifth session. At that time, the Commission adopted decision 12 (XXXV) of 14 March 1979, in which it decided to send a telegram to the Government in connection with the assassination of Mr. Alberto Fuentes Mohr, ex-Minister for Foreign Affairs and Finance and a former member of the United Nations Secretariat.

2. At its thirty-seventh session in 1981, the Commission had before it a report by the Secretary-General on the situation in Guatemala (E/CN.4/1438). Subsequently, on 11 March 1981, the Commission adopted resolution 33 (XXXVII), in which it requested the Secretary-General to continue his efforts to establish direct contacts with the Government. Soon afterwards, the General Assembly had before it a further report by the Secretary-General (A/36/705); it adopted decision 36/435 of 16 December 1981, in which it requested the Secretary-General to continue his efforts and the Government to cooperate further with the Secretary-General.

3. At its thirty-eighth session, in resolution 1982/31, on 11 March 1982, the Commission decided for the first time to request its Chairman to appoint a Special Rapporteur of the Commission, whose mandate would be to make a thorough study of the human rights situation in Guatemala. The following year, the Commission reiterated the same request to its Chairman, in resolution 1983/37 of 8 March 1983. Consequently, the Chairman appointed as Special Rapporteur of the Commission Viscount Colville of Culross, United Kingdom, whose mandate was renewed annually in 1984 and 1985. In discharging his mandate, Viscount Colville of Culross submitted the following reports to the General Assembly and the Commission on Human Rights: A/38/485, E/CN.4/1984/30, A/39/635, E/CN.4/1985/19, A/40/865 and E/CN.4/1986/23.

4. The mandate of the Special Rapporteur was terminated in 1986, when the Commission, at its forty-second session, adopted resolution 1986/62 of 13 March 1986 (para. 9). At the same time, the Commission requested its Chairman to appoint a special representative to receive and evaluate the information provided by the Government on the implementation of the new legal order for the protection of human rights (paras. 7 and 8). The Commission appointed as its Special Representative Viscount Colville of Culross, who submitted a report at the next session of the Commission (E/CN.4/1987/24). Subsequently, the Commission adopted resolution 1987/53 on 11 March 1987, in which it decided to terminate the mandate of the Special Representative.

5. Also, in the same resolution 1987/53, the Commission requested the Secretary-General to appoint an expert with a view to assisting the Government through direct contacts, in taking the necessary action for the further restoration of human rights. Following this resolution, the Secretary-General appointed as Expert, on 24 June 1987, Mr. Hector Gros Espiell, of Uruguay, who submitted three reports at successive sessions of the Commission (E/CN.4/1988/42, E/CN.4/1989/39, and E/CN.4/1990/45), his mandate having been extended in Commission resolutions 1988/50 and 1989/74. Mr. Gros Espiell, however, informed the Commission, during its forty-sixth session, that he would not be able to accept the renewal of his mandate as an Expert, due to his recent appointment as the Minister for Foreign Affairs of his country.

6. In these circumstances, the Commission on Human Rights adopted at its forty-sixth session resolution 1990/80 of 7 March 1990 in which it requested the Secretary-General:

> " ... to continue to provide the Government of Guatemala with such advisory services and other forms of assistance in the field of human rights as may be necessary to foster and strengthen the consolidation of the democratic process, and promote a human rights culture" (para. 13).

7. The Commission further requested the Secretary-General:

> " ... to appoint an independent expert as his representative to examine the human rights situation in Guatemala and continue assistance to the Government in the field of human rights who, within the framework of his mandate, shall prepare a report with appropriate recommendations for submission to the Commission at its forty-seventh session" (para. 14).

8. In compliance with the request contained in paragraph 14 of Commission resolution 1990/80, the Secretary-General decided on 6 July 1990 to appoint Mr. Christian Tomuschat, Germany, as his representative and independent Expert to consider the situation of human rights in Guatemala and to continue assistance to the Government in the field of human rights. The decision was made public on the same day in press release HR/2597.

9. In fulfilment of his mandate, the present independent Expert visited Guatemala twice, (from September to October 1990 and in February 1991) and informed the Commission about the human rights situation in that country in the reports contained in documents E/CN.4/1991/5 and E/CN.4/1991/5/Add.1. On the basis of these reports, on 6 March 1991 the Commission adopted resolution 1991/51 entitled "Assistance to Guatemala in the field of human rights" in which it requested the Secretary-General, inter alia, "to extend the mandate of the independent Expert so that he may continue to examine the human rights situation in Guatemala and provide assistance to the Government in the field of human rights, reporting to the Commission on the subject at its forty-eighth session" (para. 11). The Commission also decided to consider the question at its forty-eighth session "under an item of the agenda to be determined in the light of the above-mentioned report and the situation of human rights and fundamental freedoms in Guatemala" (para. 12).

10. In its turn, the Economic and Social Council, in its decision 1991/246 of 31 May 1991, approved the Commission's request to extend the mandate of the independent Expert.

11. On 23 August 1991, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 1991/5, in which it emphasized, inter alia, that it was a matter of importance that the Expert should pay special attention to the situation of the indigenous peoples (para. 9). It also stressed the need to provide assistance in the field of human rights both to the Government of Guatemala and to the Guatemalan non-governmental organizations that require it (para. 10).

12. In fulfilment of his present mandate, the independent Expert visited Guatemala a third time from 2 to 12 October 1991 and, at the end of his visit, held consultations and interviews at United Nations Headquarters in New York. In the course of a subsequent visit to United Nations Headquarters, he was able to have further consultations. The Expert's programme of work during his most recent mission to Guatemala and his visits to United Nations Headquarters in New York are outlined in the annex to this report.

13. As in the previous year, the Expert continued to consult all the accessible and reliable sources in order to acquaint himself with the situation of human rights in Guatemala. In doing so, he was afforded extensive cooperation by the Government of Guatemala before, during and after his third official visit to the country. In addition, the Expert was free to consult a large number of persons and Guatemalan human rights, social, trade union, economic and indigenous organizations. He also consulted the documentation received from international organizations, intergovernmental organizations (especially the Organization of American States and the International Labour Organisation), other United Nations agencies (in particular, the Office of the United Nations High Commissioner for Refugees) and non-governmental international organizations.

14. The Expert took all the information gathered and compared it with the provisions contained in the Universal Declaration of Human Rights, the international human rights treaties to which Guatemala is a party, such as the International Covenant on Economic, Social and Cultural Rights (to which Guatemala acceded on 19 May 1988), the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (to which Guatemala acceded on 5 January 1990), the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, the Convention and the Protocol relating to the Status of Refugees, and many international labour conventions, including in particular Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, 1948, Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, 1949, and Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, 1958. Guatemala is also a party to the American Convention on Human Rights, having recognized the litigious jurisdiction of the Inter-American Court of Human Rights with effect from 20 Feburary 1987, and to the Inter-American Convention to Prevent and Punish Torture. Lastly, in the field of international humanitarian law, Guatemala ratified the four 1949 Geneva Conventions on 14 May 1952; it also ratified the two 1977 Protocols additional to the Geneva Conventions on 19 October 1987, and on 13 September 1989 it signed the Headquarters Agreement for the establishment of an International Committee of the Red Cross (ICRC) Office in Guatemala.

15. All the provisions of international human rights law accepted by Guatemala form part of the country's internal law, because under article 46 of the 1985 Constitution "it is established as a general principle that, in matters of human rights, treaties and conventions accepted and ratified by Guatemala take precedence over internal law". This principle is repeated in article 3 of the Amparo, Habeas Corpus and Constitutionality Act of 8 January 1986. With regard to the Universal Declaration of Human Rights, Decree No. 54-86 of 1 October 1986, which was amended by Decree No. 32-87 of 28 May 1987, establishes in article 8 that the Procurator for Human Rights shall be a Congressional Commissioner for the defence of the human rights guaranteed by the Constitution, the Universal Declaration of Human Rights, and the international treaties accepted and ratified by Guatemala.

16. This report refers to events between March and December 1991, although other relevant earlier and subsequent information has been included when available and when considered appropriate.

I. POLITICAL DEVELOPMENTS IN 1991

A. The peace negotiations

17. As stated in the last report of the Expert (E/CN.4/1991/5, paras. 50-59), the Esquipulas II Accord of 1987, concluded between the Presidents of the five Central American Republics, laid down the bases for the process of national reconciliation. Esquipulas II provides for the establishment, in all five States, of national commissions of reconciliation whose mandate should be to initiate a broad dialogue between all sectors of society, in particular between Governments and opposition. In Guatemala, implementing the Esquipulas II Accord, President Cerezo established the National Reconciliation Commission, of which Monsignor Rodolfo Quezado Toruño was appointed Chairman. On 10 March 1990, a delegation of the National Reconciliation Commission, acting with the full support of the Government of the Republic, and a delegation of the National Revolutionary United Front (URNG) signed in Oslo a "Basic Agreement for the Search for Peace by Political Means", with a view to initiating a process which, by seeking ways to bring about a peaceful solution of the nation's problems, would culminate in the attainment of peace and the enhancement of functional and participatory democracy in Guatemala. Pursuant to the Oslo Agreement, five meetings were held in 1990 between representatives of URNG and representatives of various political, business, religious and social sectors in Guatemala, in the presence of the Chairman of the National Reconciliation Commission and the Representative of the Secretary-General of the United Nations, Mr. Francesc Vendrell.

18. On 8 April 1991, the newly-elected President, Jorge Serrano Elías, made public his "Initiative for the total peace of the nation". He emphasized that the peace he sought was to be more than a simple truce, namely, a comprehensive structure which should provide the bases for the reconciliation and harmonious coexistence of all Guatemalans. In view of the termination of armed hostilities, he recognized that the members of the guerrilla forces should be given full opportunities to reintegrate themselves into the social and political life of the nation. He also pledged to intensify the efforts of the State to overcome poverty and misery by launching new programmes in

the fields of education, health and social security. Respect for, and strengthening of, the rule of law was further identified as one of the elements of a comprehensive peace. Finally, he manifested his intention of deepening the democratic process, in particular through "administrative decentralization, the strengthening of local government and the revaluation of Mayan culture". On 26 April 1991, at Mexico City, the Government of Guatemala and URNG signed an agreement on the procedure for the search for peace by political means, in which they agreed to hold talks with the Chairman of the National Reconciliation Commission of Guatemala, Monsignor Roldolfo Quezada Toruño, acting as Conciliator, and with the Representative of the Secretary-General of the United Nations, Mr. Francesc Vendrell, acting as Observer. Under this Agreement, the two parties undertook to conduct a process of negotiation that would permit, in the shortest possible time, the signing of an agreement on a firm and lasting peace which would set out political agreements, how they were to be implemented and executed by the parties and how their fulfilment was to be verified by the United Nations and such other bodies as the parties might designate by mutual agreement. The Government and URNG agreed to hold negotiations through direct meetings between the parties, with the active participation of the Conciliator and in the presence of the Observer, or through indirect meetings through the Conciliator and in the presence of the Observer. The two parties also agreed not to abandon the negotiating process unilaterally and to pursue it without interruption, in accordance with the agreed procedure, until the negotiating agenda was exhausted. In so doing, they undertook to act in good faith in an atmosphere of complete mutual respect and reiterated their express determination to reach political agreements for achieving a firm and lasting peace that would bring the internal armed conflict in Guatemala to an early, definitive end. The Government and URNG undertook to be duly represented in the negotiations by high-level delegates, in order to negotiate and conclude political agreements in accordance with the existing constitutional framework. The parties also agreed on a general agenda of 11 items to be addressed during the negotiations:

1. Democratization - human rights

2. Strengthening of the civilian authority and the function of the army in a democratic society

3. Identity and rights of the indigenous peoples

4. Constitutional amendments and electoral system

5. Socio-economic issues

6. Agrarian situation

7. Resettlement of the populations uprooted by the armed conflict

8. Basis for the incorporation of the National Revolutionary United Front (URNG) into the political life of the country

9. Arrangements for a permanent cease-fire

10. Timetable for the execution, fulfilment and verification of the agreements

11. Signature of the Agreement for a firm and lasting peace, and demobilization.

19. After reaching the agreement on procedure and the agenda, a second round of talks was held at Cuernavaca, Mexico, from 17 to 22 June 1991. No reports about the outcome of the meeting were made available to the public in accordance with paragraph 7 of the Mexico Agreement, pursuant to which the proceedings are to remain confidential unless the parties, by common agreement, decide otherwise. The third round of negotiations, which took place at Querétaro, Mexico, from 22 to 25 July 1991, led to a framework agreement on democratization which the parties decided to disseminate widely for the benefit of the people of Guatemala. The main provisions of that agreement read as follows:

"I. That the strengthening of functional and participatory democracy requires:

(a) That the civilian branch should be pre-eminent in society;

(b) That democratic institutions should be developed;

(c) That a State governed by the rule of law should be in place and functioning;

(d) That all political repression, electoral fraud and rigging, military gangs and pressure, and anti-democratic destabilizing activity should be eliminated;

(e) Unconditional respect for human rights;

(f) The subordination of the armed forces to civilian authority;

(g) Recognition of, and respect for, the identity and rights of the indigenous peoples;

(h) Access to, and enjoyment by all Guatemalans of, the benefits of national production and natural resources, in accordance with the principles of social justice;

(i) The effective resettlement of the populations uprooted by the internal armed conflict.

"II. That democratization requires that the direct or indirect participation of civilian society as a whole in the framing, execution and evaluation of the Government's policies at the various administrative levels should be guaranteed and promoted, with due recognition of the right of all the groups of society which constitute the Nation to be promoted through fair and equitable labour relations, according to their own cultural and organizational patterns and with full respect for human rights and the law".

20. After a fourth round of talks in September 1991, the parties met again at the same place from 21 to 23 October 1991 to advance their programme of work. The agenda item to be dealt with was human rights. Unfortunately, as amply reported in the Guatemalan press, major divergencies emerged concerning four sub-items, although consensus was reached on a number of issues, such as compensation of, or assistance to, victims of internal strife, amendment of the Penal Code to include the main forms of political delinquency as crimes against humanity, and forcible drafting methods for military service. Disagreement related to: the proposal of URNG to establish a commission of truth and justice, made up of five members, to be entrusted with inquiring into all violations of human rights since 1978, as well as identifying the perpetrators; the suggestion that the civilian self-defence patrols should be abolished; the call of URNG to have Additional Protocol II to the Geneva Conventions of 1949 applied to the armed conflict between the armed forces and URNG; and the possible date of application of an agreement, URNG requesting its immediate enforcement, and the Government wishing its implementation to be postponed until such time as a comprehensive peace treaty had been concluded. After the breakdown of the direct talks, it was decided by the two sides to continue the dialogue in indirect form as a "pendular process". Monsignor Quezada Toruño, as Conciliator, and the United Nations Observer, Mr. Francesc Vendrell, were mandated to play an even more active role than before. According to the new concept, the Conciliator and his advisers, as well as the United Nations Observer and his advisers, were to meet separately with each of the two delegations with a view to identifying any common positions, and to propose a new round of direct talks only if serious chances of reaching an agreement could be perceived. At the time of completion of the present report, no more is known about recent developments than the fact that the process of negotiations has indeed continued with the active support of the Conciliator and Observer. This alone is an encouraging sign as after the collapse of their negotiations the two sides had blamed one another of bearing responsibility for the impasse, even resorting to placing advertisements in the local press of Guatemala for that purpose.

21. The Expert welcomes the first results of the talks held between the Government and URNG and expresses the hope that the talks may soon be continued in the form of a direct dialogue between the two sides, so that practical solutions for Guatemala's most disturbing problems can be found without further delay. The Expert does not wish to interfere in the negotiations, which lie outside his mandate. It should not be overlooked, however, that to establish a society permeated and shaped by the spirit embodied in the Constitution will take considerable time. The conclusion of a formal agreement between the Government and URNG can only be the starting-point of a long and arduous process of implementing the undertakings mutually accepted. In order to facilitate this process, both sides should already now make an attempt to overcome their mutual distrust. One of the greatest obstacles to peace is the belief that the interlocutor is not reliable and may not honour his pledges. Thus, on both sides, a deliberate effort at confidence building should be made. In this respect, every concrete action which improves the human rights situation in Guatemala can be counted as a positive element for the Government. URNG could also show the seriousness of its intentions to build a better Guatemala tomorrow by

henceforth refraining from destroying any of the country's infrastructure, the repair or replacement of which inevitably places a heavy burden on the whole people of Guatemala.

22. A further difficulty for the negotiations between the Government and URNG is the fact that recently critical voices have challenged the secrecy surrounding the negotiations. Some of the societal groups which met with URNG in 1990 claimed that they should not be excluded from the talks, given the impact of these talks on the future of Guatemala. Two meetings were held at the premises of the National Commission of Reconciliation on 20 November and 4 December 1991. At the end of the second meeting, a declaration was adopted by 37 different organizations, stating their dissatisfaction with the modalities of the process of negotiation and claiming, in the name of participatory democracy, to be associated with that process. The Secretary-General of the Christian Democrat Party, Alfonso Cabrera, also announced that his party could enter into negotiations with URNG with a view to discussing issues of constitutional reform. All these developments show that the Guatemalan society is alarmed by the slow pace of the dialogue and wishes tangible results in the near future.

23. Guatemala is today a country rich in organizations for the promotion and protection of human rights. The Mutual Support Group, more widely known under its acronym GAM, was set up by surviving victims of repression who had lost their next of kin, to provide mutual support to one another and to foster a social climate free from obsessive ideas which view violence as the only means to wipe out presumed enemies of the State of Guatemala. CERJ, the Runujel Junam Ethnic Communities Council was more recently established to defend the interests of indigenous communities, long neglected by the official machinery of the State. CONDEG, the National Council of Displaced Persons of Guatemala, is an association of people who had to flee their homes at the height of the internal strife in Guatemala. CONAVIGUA, the Guatemalan Widows' National Coordinating Committee, was created by women who had lost their husbands during the same period. CUC, the Peasant Unity Committee, represents the specific interests of indigenous farmers and farm labourers. These are some examples, but there are others.

24. All these organizations based in Guatemala recall by their very existence and by their activities the most bitter years of the recent past of the country. At the same time, however, their attention is not turned solely on the tragic events of the civil war. What they all seek to achieve is a new structure for Guatemalan society, characterized by justice, tolerance and full equality for all, without discrimination of any kind, based on race, language, social origin, sex, or political or other opinion. It is clear that the views expressed by these organizations are not always pleasant for the Government. Having suffered terrible shocks in their personal lives through actions carried out by the security forces, the leaders of those organizations must almost necessarily keep a critical distance from the Government, notwithstanding the fact that the present Government of Guatemala has been put in place through democratic elections and thus differs essentially from the de facto Governments which ruled the country for decades until 1985. They are not easily convinced by the pledges of the politicians to alter their conduct,

but want to see practical, concrete deeds. Their attitude of mistrust, on the other hand, is generally resented by the Government, which feels that more credit should be given to its attempts to make human rights the centrepiece of its policies. Consequently, the human rights organizations and the Government mostly coexist in a state of mutual tension.

25. Time and again, members of the State machinery at all levels feel to such an extent worried by the criticisms directed against them that they equate the organizations concerned with auxiliary assistance groups of the guerrilla forces. Even more common is the classification as "subversive". Any such label is extremely dangerous in Guatemala since there still exist criminal groups attracted by the perverse idea that the guerrilla, their supporters and anyone holding or manifesting convictions other than the official ones should be eradicated by violent means. It is obvious that every person in public office has a heavy responsibility in this regard. He or she must be aware of the necessity to weigh his or her words carefully in order not to exclude anyone by verbal disparagement from the civilized society of all Guatemalans.

26. One cannot escape the impression that in Guatemala many members of the leading circles have not yet understood what it means to live in a free democratic society. In such a society, as it is clearly defined by the Guatemalan Constitution, every person is fully entitled to express his or her opinions. It is also legitimate to form groups of like-minded people who share common values and therefore wish to act together for the attainment of specific political goals. There can be no distinction between "good" and "bad" opinions, except for certain limitations, the most important of which is that advocacy of social hatred or violence as a means of political struggle may be prohibited and subject to penal sanctions. Freedom of expression and freedom of association are particularly designed to protect critics of the Government. No one who is keen on manifesting his or her agreement with official policies needs specific guarantees of his or her personal security. It is the dissident, the member of an opposition group, for whose benefit the constitutional system has been created and the corresponding rights have been embodied in the International Covenant on Civil and Political Rights.

27. It is only from an unhindered, unrestricted competition of opinions that an accurate picture of a people's true political aspirations can emerge. Everyone must have unimpeded access to the market place of ideas. It is the natural "burden" of a democratic Government to have to listen to voices which are dissatified with its actions. Seen in perspective, this burden, if complied with, becomes a true asset. Indeed, if a Government takes note of the many responses to its policies and carefully weighs them with a view to improving its policies, its political authority will thereby be greatly strengthened. In this sense, the criticisms continually being uttered by the human rights organizations in Guatemala should not be dismissed by the Government, but should be welcomed as providing an opportunity to revise and refine activities already engaged in, as well as future strategies. To respect and ensure human rights is not the responsibility of the Government alone, but requires an effort by Guatemalan society as a whole. This means, on the other hand, that the organizations working precisely for that purpose must be respected and even encouraged when they contribute their share to the accomplishment of the common task.

28. From this viewpoint, it is alarming and intriguing that the human rights organizations referred to have suffered heavily during 1991, even paying a considerable death toll (see paras. 90-92, 103 and 116-121 below). This state of affairs can only be explained by the fact that a widely prevailing mental attitude still considers the advocacy of radical change in internal policies as potentially dangerous, and hence illegitimate and subversive. It is gratifying to note that on several occasions the President himself demonstrated his support for members of human rights organizations by receiving them personally, thereby making clear that they enjoyed his personal protection. Thus, in June 1991 he met Amilcar Méndez, leader of CERJ, after the latter had received death threats, almost destroying, however, the positive impact left by this gesture when, during a press conference given in Washington, he made the unfortunate observation that Amilcar Méndez and CERJ "are travelling on a parallel course with insurgent groups". A most constructive step in the same direction was the conclusion, on 6 November 1991, of an agreement between the Casa Alianza organization, whose main goal is to take care of street children, and the Public Prosecutor's office on "Cooperation for the defence and protection of street children and abandoned minors or minors in an irregular situation" (see para. 38 below). By virtue of this agreement, the moral standing of "Casa Alianza" within Guatemalan society will certainly be consolidated, so that it may be hoped that "Casa Alianza" will in the future be able to carry out its work without any outside interference. The Government should reflect on other ways and means how, without confusing responsibilities, the existing human rights organizations could be associated with official activities for the promotion and protection of human rights. Such official acknowledgement of the importance of the work done by these organizations is not only to their benefit, but has at the same time the effect of reducing tension, making communication and understanding between all sectors of the population possible.

B. Legislative and institutional initiatives

29. During 1991, Congress was slow in responding to the call of the President for swift reform with a view to strengthening the impact of human rights on Guatemalan society. The draft bill concerning approval of the International Covenant on Civil and Political Rights and its Optional Protocol is still pending before the Legislature. No plausible explanation for this deplorable delay has been offered to the Expert who, instead, was assured by all the members of Congress he was able to speak with that there was broad general support for the Covenant.

30. Similarly, Congress has proved unable to finalize its examination of the proposed new Code of Criminal Procedure which, for the first time, would make oral hearings a compulsory element of trial procedures. The Expert is convinced that many of the present deficiences of the judicial system are to be attributed to the lack of an oral stage in the penal process. In particular, the control function inherent in the presence of the public at oral hearings would to a considerable extent diminish the possibilities of external influence. Visitors at a hearing would get a personal impression of the trustworthiness of witnesses for the prosecution or the defence. Thus, the margin of subjective appreciation of evidence by judges could be considerably reduced. On the whole, the judicial system would gain in public stature and recognition. At present, to the outside observer many penal

trials have the appearance of a deal concluded between the judge, the prosecutor and the accused, simply because it is not possible to be present at even the decisive last stage of proceedings. Under these circumstances, it is easy to understand why in general Guatemalans have little confidence in their judicial system, believing it to be marred by the same flaws which affect the other branches of government. Congress should therefore speed up its work on the bill and complete it as soon as possible.

31. Other reforms are urgently required in order to translate into concrete form the will, manifested by all high-ranking officers of the Nation, to put an end to impunity. According to article 219 of the Constitution, all members of the armed forces are subject only to the jurisdiction of military tribunals, no matter whether an alleged crime has a specifically military character or must be classified as a common offence. It is hard to understand why such a privilege exists, to which the Military Code (Second Part, Military Tribunals and Procedures, art. 10) makes only minor exceptions. This differential treatment is all the more challengeable since the Military Code, which dates back to 1878, does not offer the necessary guarantees of impartial justice. In the first instance, jurisdiction is exclusively vested in officers or special institutions of the armed forces (art. 3). A court martial, the main body for judging criminal offences committed by soldiers (art. 313) is made up of five officers none of whom may have had any legal training. In all proceedings under the system of military justice, an auditor de guerra, who must be a lawyer with all the qualifications needed for a judge of first instance, advises the judicial institution concerned, but he himself is not a member of such institution. He takes part in the deliberations, but has no vote. This system may work to the detriment of the accused, given the absence of real independence of the military "judges". But it may also be viewed as a mechanism to grant preferential treatment to members of the armed forces, who are judged by their peers. Many elements would suggest that, in practice, in particular cases with a political background, the second interpretation is correct. In any event, the time has come for a thorough review of the Military Code. If Guatemala wishes to accede to the International Covenant on Civil and Political Rights, its system of criminal justice must be in full consonance with article 14 of that instrument. Some proposals to amend the Military Code are contained in the draft of a new code of criminal procedures (art. 546). However, these proposals do not remedy all of the flaws of the present regime. The Military Code must be overhauled as a whole and adapted to current international standards of criminal justice.

32. Another feature of the system of criminal prosecution in Guatemala that can be criticized is the privilege of antejuicio (preliminary trial). When a person enjoys this privilege, before measures of criminal prosecution can be initiated against him, either the National Congress or a tribunal must decide whether there exist sufficient factual and legal grounds to justify such a step. The Constitution provides that the highest dignitaries of the nation, as well as the members of Congress, are entitled to this kind of protection against abusive penal actions (arts. 161 (a), 165 (h) and 206). The ordinary legislation has extended the requirement of preliminary trial to all judges, even going so far as to include mayors, commanders of military bases and candidates for public elections. Thus, in every instance where a person belonging to one of these numerous categories is charged with having committed a criminal offence, lengthy and cumbersome procedures must be resorted to

before he or she can eventually be brought to trial. To be sure, the privilege of antejuicio does have its justification as a means of safeguarding the holders of the highest political office against political manoeuvres disguised as measures of penal prosecution. The excessive use of the privilege, however, puts in jeopardy the basic principle of equality before the law.

33. It should also be recalled that the bills to amend the Penal Code and the Office of the Attorney-General of the Nation Act are still awaiting a decision by Congress. For its part, the Congressional Human Rights Commission has submitted a bill on the establishment of municipal human rights committees which has had a first reading. The Executive has also solicited legal opinions on the possible ratification of International Labour Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

34. On 12 July 1991, Government Decision No. 486/91 was adopted under which, following the recommendations of the Expert, the Presidential Advisory Commission on Human Rights will be restructured and the new Presidential Coordinating Commission for Executive Policy in respect of Human Rights (COPREDEH) will be established, for the purpose of coordinating the actions of the ministries and institutions of the Executive, in order to ensure the implementation and protection of human rights and to guarantee communication and cooperation between the President of the Republic, and the Judiciary and the Office of the Procurator for Human Rights (art. 1). The functions of this Commission include the centralization of complaints of human rights violations, the promotion of investigation of these complaints and follow-up action, and the establishment of cooperation with the international bodies for the protection of human rights. The Commission will operation at the highest level and report directly to the President of the Republic; it will consist of a personal representative of the President, the Ministers of Foreign Affairs, the Interior and National Defence, and the Attorney-General of the Nation. In exceptional circumstances the ministers may delegate their authority to their respective deputy ministers.

35. By another government decision, the National Peace Fund (FONAPAZ) was established in 1991, with an initial governmental contribution of 35 million quetzales. Its purpose is to formulate and execute programmes and projects to provide immediate assistance to Guatemalans who are refugees, returnees, displaced, demobilized and resettled, and to the other groups or sectors of the population affected by the internal armed conflict and measures to support the work of relocating and resettling persons as part of the peace process now under way (art. 1). Consequently the duties of FONAPAZ will include the formulation of government policy to assist "refugees, returnees, persons who are displaced, and demobilized or resettled, and the groups or sectors of the population affected by the internal armed conflict" (art. 5 (a)).

36. On 1 March 1991, another government decision established the political institution of the Social Covenant in order to formalize the Covenant as a dynamic instrument through which the productive sectors represented may channel their efforts to find solutions to the country's social problems and thus achieve economic and social stability. Within that framework,

two agreements have been reached, the first fixing new minimum wage levels, and the second recommending the depoliticization of the Guatemalan Social Security Institute and the restoration of its full autonomy, by giving the workers greater participation in its administration. However, some of the bigger trade unions decided not to take part in the Social Covenant.

37. Appointments of certain high-ranking officials have reflected a political determination to strengthen civilian authority. Thus, Fernando Hurtado Prem, former Deputy Procurator for Human Rights, has been appointed Minister of the Interior, from which post he can give special attention to human rights issues. Again, at the urging of the Expert, the post of Director of the National Police, which had previously been held by a military officer, was recently filled by a civilian lawyer.

38. The Office of the Attorney-General of the Nation has become more dynamic now that the incumbent has been replaced by a person who has shown a willingness to play a more active role in the proper administration of justice. One of his priorities has been to remove the impression of impunity which had been created through the failure to prosecute effectively and secure the judicial sanction of persons found guilty of serious violations of human rights. So far, the measures he has taken have led to the trial of a number of military and police personnel who have been charged with serious crimes, and guilty verdicts have been handed down in two of these cases at first instance. As stated in paragraph 28 above, on 6 November 1991, the Attorney-General of the Nation concluded a 12-month "Cooperation agreement for the defence and protection of street children and abandoned minors or minors in an irregular situation" with the Casa Alianza Association, recognizing that the Association "includes among the goals established in its charter the prevention of the ill-treatment of children, seeking at all times to offer them moral, spiritual and material support". By acknowledging that mutual cooperation is needed in order to help children, the Agreement will enable joint programmes to be established "for the defence and protection of street children and abandoned minors or minors in an irregular situation". To this end, Casa Alianza will operate as an auxiliary body of the Office of the Attorney-General of the Republic and will report to it any cases which come to its attention. For his part, the Public Prosecutor will provide the legal support office for Casa Alianza street children with the necessary legal backing to enable it to achieve its goals.

39. On 31 December 1991, the Procurator for Minors of the Public Prosecutor's Office, on the one hand, and the National Director and the Coordinator of the legal support office of the Casa Alianza Association, on the other, signed a joint report on abuses committed against street children during 1991. The report mentions four cases of homicide, three cases of wounding with firearms, four cases of abuse of authority, three cases of abuse of authority with injury, nine cases of abduction with injury and five cases of injury. As regards the perpetrators, the report states that in 25 cases, individuals were responsible, in seven, members of the National Police, in one case the Military Police Flying Squad and in a further case G-2 military personnel. The report concludes that in 1991 the number of offences against street children did not decrease, but the security forces acted less arbitrarily than in the past. Furthermore, most of the offences were committed by individuals who in some cases may have been members of the security forces acting in a personal capacity.

C. The armed forces

40. The Expert wishes to emphasize once again what he stated in his previous report (E/CN.4/1991/5, paras. 43 and 44), namely, that the armed forces should not view their role as that of an independent political power, but must remain loyally subordinate to the civilian authorities who have received a mandate from the people of Guatemala to govern the country. As a matter of principle, an institution which does not directly rely on the voters' democratically expressed will cannot claim to embody the true and authentic aspirations of Guatemalan society.

41. In 1991, President Serrano made several appointments in the armed forces which changed the entire command structure at the highest level. First of all, in October 1991 the Commander of the Air Force, General Marco Antonio Vargas, was replaced by Brigadier-General Carlos Alberto Pozuelos Villavicencio. Later in the year, on 6 December 1991, the Minister of Defence, General Luis Enrique Mendoza, had to retire in favour of General José Domingo García Samayoa. At the same time Brigadier-General Jorge Roberto Perussina was appointed as the new head of the Chief of Staff for Defence, while Brigadier-General Mario René Enríquez Morales became his deputy. All three of them have been participating in the negotiations with URNG, a fact which permits the conclusion that they are certainly not hostile to those negotiations. It was reported in the Guatemalan press that the changes had caused considerable feeling within the army. However, the armed forces have been respectful of the power of the President as their Commander-in-Chief.

42. One of the main challenges which the armed forces have not yet mastered is how to deal with the civilian population in those areas where from time to time the guerrilla forces make their presence felt. The Expert was informed about several incidents around Ixcan (El Quiché) in which aerial attacks, including bombing and machine-gun fire, were carried out against settlements of the Comunidades de Población en Resistencia. In a press communiqué of 22 November 1991, the Comunidades de Población de Resistencia del Petén complained of indiscriminate attacks against them, notwithstanding the fact that they had never participated in any armed activities against the army (for details, see para. 51 below). The Expert himself was involved in an incident when he visited the commune of Cabá in the northern part of El Quiché on 10 October 1991 (see paras. 54-63 below). After exhaustive explanations had been given to him by the President in a personal letter, as well as by the competent commanders of the armed forces, informing him that the shooting had taken place at a distance of about three kilometres from Cabá where the two military planes involved had been attacked by guerrilla forces, the Expert declared that he considered the incident closed. It should be noted, however, that in an advertisement published in the Guatemalan press on 16 October 1991 the population of Cabá reaffirmed that they themselves had been the object of the aerial assault, requesting that such actions stop forthwith. The Expert wishes to emphasize once again that methods of combat which involve attacks against targets which cannot be clearly identified as military ones have no justification and cannot be considered compatible with the duty of the State to protect the lives of all of its citizens, as enshrined in article 3 of the Guatemalan Constitution.

43. During his visit to Cabá, the Expert was informed that the inhabitants of this village could not leave to establish or maintain personal contacts and commercial relationships with the outside world. Several men who had attempted to walk to other villages in the government-controlled zone of El Quiché had been killed on the way. According to statements by the persons he could interview, the armed forces are pursuing a deliberate strategy of isolating the population in the combat areas in order to force them to give up and to leave those areas. As a consequence of this state of affairs, none of the children living in Cabá has received a vaccination, which entails for them a serious danger of becoming victims of illnesses against which, in principle, immunization can be easily obtained. Similarly, a person who falls seriously ill is totally cut off from any medical assistance and is doomed to die if his or her own physical power of resistance is not strong enough to overcome the disease. Having learned about the deplorable fate of these people, the Expert made oral representations to the Guatemalan authorities, which he later repeated in a letter of 8 November 1991 addressed to the President of the Republic, requesting that swift remedial action be taken in order to ensure that the civilian population in the combat zones be granted the same treatment as any other citizen of Guatemala (see para. 63 below).

44. In last year's report (E/CN.4/1991/5, para. 87), the Expert analysed the arbitrariness which prevails in drafting young males for service in the armed forces. Indeed, although the Constitution provides for compulsory military service (art. 135, paras. (a) and (g)), still no draft system exists which would ensure equality before the law of all young men in the same age group. As in 1990, the armed forces have continued to resort to methods of force, arresting potential recruits at random in public places. On many occasions, in contravention of the law, even minors under 18 years of age are forced to perform military service. Furthermore, the clearly perceptible pattern of discrimination remains unchanged. Mostly, the draftees are of indigenous origin, while young people from the Ladino community are generally spared military service. In this area, particularly, a State attached to the rule of law must abide strictly by criteria of equity. In his talks with the Minister of Defence, the Expert received only evasive answers when he raised the issue. The adoption of a law regulating the modalities of the selection procedure for military service is long overdue (see also para. 65 below).

45. Since the level of violent crime has hardly diminished in Guatemala during the course of 1991, the Expert wishes lastly to recall the findings in paragraphs 48 and 49 of his previous report (E/CN.4/1991/5). In many instances, the armed forces are still blamed for participating in extrajudicial executions, disappearances and death threats. The most blatant case in point was the massacre committed on 9 August 1991: the bodies of 11 people were discovered along a highway in the southern province of Escuintla. In this instance, the leadership of the armed forces itself, in a communiqué issued a few days later, charged the Commander of the Pacific Naval Base, Captain Aníbal Rubén Sirón Arriola with having been among the perpetrators of the crime (see paras. 91 and 152 below). However, in most other instances where strong evidence suggested the involvement of the security forces, it has been impossible to clarify responsibility. Against the background of these many criminal incidents, the highest command levels of the armed forces should attach absolute priority to reviewing all military

units with the utmost care, making it plain that neither explicitly nor implicitly are they prepared to tolerate derogations from the strict military code of honour and probity. In this connection, military officers should be examined individually, one by one. Persons who in the past have engaged in abuses against the civilian population by ordering indiscriminate killings are not acceptable as leaders in the army of a democratic State subject to the rule of law. Whoever has committed or ordered such atrocities lacks the required degree of democratic reliability and harms the reputation of the armed forces as a whole.

46. In his previous report (E/CN.4/1991/5, paras. 148 and 149), the Expert recommended that article 34 (2) of the Constitution, which explicitly provides that "no one is obliged to be associated with, or form part of, self-defence or similar groups or associations", be strictly observed. Given the repeated assertions of the then Minister of Defence of Guatemala that in fact nobody was compelled to join the ranks of such groups and that the official name "Voluntary Civilian Self-Defence Committees" as opposed to the currently used label "civilian self-defence patrols" reflected the real situation, the suggestion was put forward in the additional report last year (E/CN.4/1991/5/Add.1, para. 62) that Congress should look into the issue, enacting a law to regulate in specific detail the requirements for the establishment of, and the power of, such paramilitary units made up of private citizens. This suggestion has gone totally unheeded.

47. In the light of the further information which the Expert has received in 1991 about the activities of civilian self-defence patrols and of military commissioners - private citizens with certain military privileges working for the army by collecting intelligence and recruiting, only one solution seems to be appropriate, namely, to disband and disarm the civilian self-defence patrols. The total lack of specific rules governing the legal status of civilian self-defence patrols cannot but generate uncertainties which operate to the detriment of all those who do not share the views held by their leaders. Since the army denies in principle that the patrols have been established by it, contending that they are a truly autonomous institution, it is almost logically prevented from reviewing and monitoring their activities in a regular fashion. Instead, the ties between the patrols and the armed forces boil down to a pure factual relationship. According to all the available evidence, the armed forces have everywhere played a decisive role in creating the patrols, instructing them and providing them partially with arms. However, in a state of law any armed group should be placed under the strict supervision of higher levels of the State machinery so that eventually the political accountability of a responsible member of the Government can come into play. Nothing of that kind exists at present. The leaders of the civilian self-defence patrols are not subordinate to anyone. Many of them seem to feel that they are above the law. The patrols lack any official power of arrest. Yet, it is frequently reported that people have been arrested by them.

48. The Government views the civilian self-defence patrols as a counterweight to the guerrilla forces. It has expressed the fear that, once the patrols were abolished, URNG might establish itself in the villages in question. These concerns cannot justify maintaining an institution which is clearly prohibited by the Constitution. On the other hand, if URNG is serious in

denouncing the pressure exerted mainly against indigenous peasants, it should not seek strategic advantage by attempting to turn the military balance in its favour after the abolition of the patrols. Any such hidden intentions may put off the day when finally the victims of that paramilitary service will be rescued from their plight.

49. The Expert wishes, lastly, to recall his recommendation in the previous report that all the existing curricula used in training the personnel of the security forces, the National Police and the armed forces, should be reviewed as to their conformity with the Constitution and the international instruments to which Guatemala has already acceded or to which it is about to accede (E/CN.4/1991/5, para. 162). During his visit to Guatemala, the Expert was given an issue of the periodical Soldado (No. 40, 1991), which generally explains very well the overall framework within which the armed forces have to operate, reminding readers in particular of their obligations under the Constitution and the legislation in force. On the other hand, the "Credo Kaibil" reproduced in that issue (p. 11) contains a proposition ("I shall respect the skill of my enemy, but shall combat it with all my force and strength until I have destroyed it implacably") which gives rise to concern that it could be interpreted to mean that any enemy, even after having clearly and visibly surrendered, should be killed. It need not be stressed that any such rule would be in blatant violation of generally accepted rules of warfare.

II. HUMAN RIGHTS IN THE FRAMEWORK OF THE ARMED CONFLICT

A. Abuses in the areas of conflict

50. Despite the negotiations now taking place, the internal armed conflict which has torn Guatemala apart for many years now is continuing as fiercely as ever. Because of the conflict, the army is the only government authority which is present in vast areas of the national territory, especially in the rural areas where military detachments have installed themselves and created the position of military commissioner. Again, as stated earlier, the army controls the so-called civilian self-defence patrols, made up of peasants whom it has organized to fight against the insurgents in the war zones, mainly in the rural areas of the Departments of El Quiché, Huehuetenango, Chimaltenango, San Marcos, Alto Verapaz, Sololá, Totonicapán and El Petén. In many complaints received by the Expert about extrajudicial executions, torture, ill-treatment, illegal detentions and disappearances, the army is accused of perpetrating these crimes either directly or through the military commissioners or members of the civilian patrols (see paras. 88-131 below).

51. Complaints have also been received of air raids, artillery attacks, the burning of homes, crops and churches, and the killing of animals belonging to the civilian population. Such incidents occurred at Chaxy and Santa Rosa in the Xepulel area on 13 June 1991; on 15 June 1991, bombings were reported around Cantabal, on 20 and 21 July 1991 on the Santiaguito estate, and on 23 July 1991 at Juil and Cunén and in the Retén area. The army is accused of having massacred peasants on 3 and 17 June 1991 during the Lacandona 91 operation in El Petén, after accusing them of being subversives. The Comunidades de Población en Resistencia (Communities in Resistance) (CPRs) in El Petén also reported the abduction of Joaquín López and alleged that

the army had to enter Mexican territory in order to capture him. One of the excesses of which the army was accused by the URNG was that, on 10 November 1991, troops used the civilian population of Pueblo Viejo, in the municipality of Nuevo Progreso (Department of San Marcos), as a shield by compelling them to walk in front of the army column in order to avoid possible attacks by the insurgents.

52. In his report on the first half of 1991, the Procurator for Human Rights expressed the view that these patrols should be regulated by law in order to avoid abuses and arbitrary practices. Anyone who refuses to join a patrol is accused of being a guerrilla or of collaborating with the guerrillas and is persecuted, threatened, ill-treated or tortured or even extrajudicially executed. Many of the residents who have refused to join the armed struggle have fled to the mountains and organized themselves into CPRs, which are to be found mainly in the Departments of El Quiché and El Petén. According to information from the Centre for Human Rights Research, Study and Promotion (CIEPRODH), the CPRs could comprise some 20,000 people in El Quiché. These organizations are calling upon the Government to recognize them as non-combatant civilian settlements, and denounce the harassment to which they are being subjected and the enforced isolation in which the army has been keeping them. They state that since 1980 the army has been pursuing a scorched-earth policy, burning crops, arresting peasants and carrying out air raids. The army has instituted programmes of ideological re-education, resettlement and enforced concentration in model villages. It has militarized the residents and forced them to join the civilian self-defence patrols. The army has used two methods, they say, to force the members of the CPRs to leave their places of refuge and settle in the areas under military control: the first has been to carry out air and artillery raids on the villages, and the second has been to isolate them, and to prevent any produce from reaching the communities or the communities from marketing their own produce. In this way, all possible contact with the outside world has been cut off and the residents are compelled to leave their places of refuge. Four peasants representing the CPRs who went to Guatemala City were received by the President of the Republic. They asked him to recognize their villages as civilian settlements, to withdraw the military detachments and thus demilitarize the area, to ensure freedom of movement and to allow representatives of the Catholic Church and national and international non-governmental organizations to enter their communities.

53. As a result of these talks, a Multipartite Commission was formed consisting of representatives of the Episcopal Conference of the Catholic Church and representatives of other Churches, trade unions and non-governmental organizations. The Commission made its first visit to Chajul in the Department of El Quiché on 27 and 28 February 1991. They observed that the residents of the CPRs had organized themselves in a rudimentary way in order to meet their basic educational, health, food and other needs. They asked the Commission to intervene on their behalf to secure the withdrawal of the six military detachments that had set themselves up in Amachel, La Laguna, Los Cimientos, San Francisco, Ocotal and Chajul and were surrounding the area in which they had settled. They said that they did not wish to return to the land from which they had fled because the land on which they were now living was suitable for their traditional crops.

54. The Expert saw for himself the conditions under which these residents lived. On 10 October 1991, he visited the villages of Amachel and Cabá in the municipality of Chajul (Department of El Quiché) with the Deputy Procurator for Human Rights (acting for the incumbent) and two United Nations officials. In Amachel, the population is under the control of a military detachment which dominates the village, whereas CPRs from the Sierra have settled in Cabá. As the Expert and his party were preparing to leave Amachel in a private helicopter which bore United Nations markings, they noticed a military helicopter overhead. They nevertheless took off for Cabá and on the way passed another military aircraft. As the United Nations plane approached Cabá, the delegation saw no one near the humble shacks that make up the small community, which was surprising because they were expected. However, they landed in the centre of the village and had to wait several minutes before anyone approached to welcome them. The first people to come appeared terrified: they were perspiring and nervous, and said that Cabá had just been machine-gunned by a helicopter and a military aircraft in an attack that had lasted about 15 minutes. The fear in the community was understandable and explained why there had been no crowd to meet the Expert and his party. They proceeded to one of the huts which served as an office of the "Coordinating Committee for the Communities in Resistance", where they listened to a recording which they were told had just been made of the noise of a helicopter and a plane flying overhead, and the machine-gun attack and the screams of the terrified residents. As the Expert continued to talk with the residents of Cabá and to listen as they described in detail the harsh conditions of their existence, the persons present could hear and see a military helicopter and a plane frequently flying around nearby, which naturally made all of them uneasy.

55. When the Expert and the Acting Procurator for Human Rights returned to Guatemala City, they issued a press release dated the same day in which they stated, inter alia, that they had run "the risk of being machine-gunned by military aircraft as, had already occurred a few minutes before their arrival". They concluded that "the village of Cabá is civilian and is completely defenceless"; it is therefore "unacceptable that a civilian population should be subjected to machine-gun and other attacks". They therefore recommended "emphatically that the civilian and military authorities of Guatemala should take the necessary measures to prevent machine-gun and other similar attacks which might endanger the lives and security of the civilian population making up the Communities in Resistance (CPRs)".

56. Shortly before, the Expert had addressed a letter to the Minister of National Defence in which he reported what had happened and reminded him, inter alia, that "indiscriminate attacks against persons who are not engaged in combat are offences which must be severely punished". He also expressed his surprise at the fact the attack had coincided with the arrival of his party, and his view that that had been no accident since "the highest authorities, including the military authorities, had been informed well in advance" of their journey. He added that the residents might have assumed that the helicopter carrying his party formed part of the attacking force and might therefore have been expected to react violently. Fortunately, the Expert could see that the residents were not armed and did not see any firearms in the village. He concluded with a request to the Minister of

National Defence that there should be an investigation of the incident, that the appropriate measures should be taken against whoever was found to be responsible and that a formal explanation of the matter should be sent to him.

57. At the same time, on 10 October 1991, the Expert wrote a letter to the President of the Republic bringing to his attention the facts reported above, as well as a copy of his letter to the Minister of National Defence. He also requested that, in his capacity as Commander-in-Chief of the Army, the President, should ensure that henceforth the civilian population, including the residents of the CPRs, should not be subjected to indiscriminate attacks by the army.

58. The President replied in a letter dated 11 October 1991, expressing his deep concern at the incident in Cabá. He assured the Expert "that there had not been, nor would there be, any indiscriminate machine-gun attacks by the army on any settlement or civilians, even if they were in an area of violence". He further stated that he had ordered a full investigation, and that the findings had been that the machine-gun attack had not been aimed at any village or civilian settlement, but had been the response to harassment by insurgent groups of a military helicopter ferrying supplies to a place some 3 kilometres from Cabá. Lastly, he announced that he had decided to dismiss the Commander of the Air Force.

59. That day and the following day, the Expert received senior civil and military representatives of the President, who gave him a detailed report of the military manoeuvres that had been effected around Cabá when he had been in the area. As a result of all this, the Expert wrote another letter dated 12 October 1991 to the President of the Republic accepting the explanations given and expressing the hope that the incident would serve as a starting-point for the prompt and comprehensive solution of the serious humanitarian problem besetting the groups that had styled themselves "Communities in Resistance" (CPRs).

60. While he was in Cabá, the Expert also received from the residents a document in which they reported military manoeuvres in the municipality of Chajul by an army battalion as from the first fortnight of July 1991. According to the document, the army had launched an offensive in the mountains north of the site where the CPRs had settled, between the areas of Xeputul and Cabá, and had even set up a post on a hill from which they overlooked these villages. From that position they had initiated ambush operations on the roads in the area, thus endangering the lives of the residents of the communities and preventing them from travelling freely. In the same document, it was reported that on 25 August 1991 army troops had occupied Triajá hill near Xeputul, and from there they had harassed the civilian population, forcing them to leave their farms and stealing their crops. Throughout September too, groups of soldiers harassed the community of Santa Rosa and pillaged its crops.

61. The document further states that on 2 October 1991 two residents who had gone shopping in Chajul failed to return. They were Francisco Cedillo López, aged 22, from Parramos Grande, Salquil, Nebaj (El Quiché) and Matías Bop Anay, aged 19, from Vipútul, Chajul (El Quiché). They were reportedly killed by

members of civilian patrols from the village of Chemal on the road to Chajul, at the place known as Ambalá Sibán; the patrols were under the command of Ramiro Pastor López and Manuel Velasco García, both army collaborators. The document goes on to state that on another occasion, on 30 September 1991, soldiers from the Amachel detachment captured two residents from the community of San Marcos, namely, Miguel Cobo Carrillo and Jacinto Raymundo Terraza; the following day Miguel Cobo's body was found riddled with bullets. Jacinto Raymundo Terraza has disappeared and it is feared that the unfortunate man was wounded and captured, because a thumb, pieces of the clothes he was wearing and traces of blood were found nearby.

62. Lastly, the document speaks of other actions by the army aimed at terrorizing the civilian population of the communities, and constant overflights by military planes and helicopters, which prevent them from leading a normal life and reaping their crops, because most of the time they have to take cover. Army actions are also said to have prevented the International Committee of the Red Cross (ICRC) from carrying out a free vaccination campaign for the women and children of these communities.

63. The Expert again wrote to the President of the Republic on 8 November 1991, describing the problems being faced by the CPRs in the Department of El Quiché and their deplorable living conditions. They live in a collective isolated from the rest of the country, because the army does not in practice allow them to leave their villages. Furthermore, the Government appears to have made no effort to provide them with the necessary minimum services. Thus, health services are non-existent and a sick person cannot receive medical assistance or go to hospital. Children are particularly at risk because they have never been vaccinated; they receive no schooling and are growing up illiterate. In addition, because of their isolation, the communities are forced to be completely self-sufficient since they cannot sell their produce in outside markets, nor can they buy such basic items as footwear, clothing and medicine. In his letter, the Expert reminded the President that the members of these communities are Guatemalan citizens and that the Government should refrain from taking any action against them which might be interpreted as a manifestation of a discriminatory policy. In particular, the Expert emphasized that their basic health need should be provided for and that the ICRC's initiative in conducting a vaccination campaign should be supported. If the Government were to provide the communities with the most basic services, this would undoubtedly be an important step towards promoting trust between the two parties. At the same time, the army should stop treating the CPRs as a kind of civilian arm of the guerrillas, and the CPRs for their part should try to understand that the State is not a repressive machine. The Expert concluded his letter by saying that the living conditions of the residents of the village of Amachel, which was under army control, were similar to those of the CPRs. For example, the hut which housed the district school was far below minimum standards and the teachers were untrained.

64. The internal armed conflict itself is causing considerable loss of human life. Both parties to the conflict blame each other and in many cases humanitarian rules are not respected when clashes occur. Thus the parties seldom acknowledge that they have captured combatants alive. In this

connection, the Expert brought to the attention of the President reports that, on 16 October 1991, there had been an armed clash between the army and guerrilla forces in the village of San Lorenzo el Cubo (Department of Sacatepéquez) in which several soldiers and guerrillas had died and the woman guerrilla fighter Verónica Ortíz Hernández, aged 22, had been wounded and captured by the army. The Expert asked the President to conduct an exhaustive investigation of these reports and, if they proved true, to adopt the necessary measures to save the life and physical integrity of Verónica Ortíz Hernández. Unfortunately, on 9 December 1991, the Deputy Minister for Foreign Affairs replied that "at no time has the above-mentioned person been captured". The Minister of National Defence adopted a different attitude when, during a visit by the Expert on 3 October 1991, he showed the Expert photographs of the bodies of two civilians and four young soldiers who, he said, had been caught in an ambush by the URNG; the photographs showed that the victims had been shot dead by a coup de grâce. These events occurred in Rio Xalbal (Playa Grande) on 1 October 1991.

65. As has already been stated, article 135 of the Constitution provides that military service in Guatemala is a duty and a civic right of Guatemalans "in accordance with the law". Military service is in fact regulated by the Act establishing the army, which sets forth the legal conditions for recruitment. First and foremost, only men between the ages of 18 and 25 may be recruited, and so minors are excluded. Obviously there are exceptions and these too are spelt out, in the Act. However, it is important to emphasize, as in fact the Procurator for Human Rights has done - with the aim of placing the practice of recruitment within the dictates of the law - that there is a legal procedure for the recruitment of citizens. Under this procedure, the commanders of military zones are required to ask the civil registrars within their jurisdictions to provide them with quarterly lists of males who have reached their majority. Consequently, the recruitment practices reported for many years now, whereby Guatemalans - mostly indigenous peasants, and sometimes minors - have been taken by surprise, recruited and forced into military service, are obviously illegal.

66. In 1991, representatives of the Archdiocese of Guatemala visited the villages of Xemal and Ical (municipality of Colotenango), the municipality of San Rafael Petzal, and the municipalities of Aguacatán and Ixtahuacán, which are all in the Department of Huehuetenango. The purpose of these visits was to follow up complaints that they themselves had investigated in 1990. As it turned out, the representatives of the Archdiocese observed that the enforced participation of peasants in the civilian self-defence patrols was continuing as were various abuses perpetrated by army personnel against the civilian population of these municipalities (see Civiles entre tres fuegos, report of 20 August 1991). According to this report, in July 1991 the population of Ical in the municipality of Colotenango (Department of Huehuetenango) decided not to continue participating in the civilian self-defence patrols (PACs). The reaction was to send 40 soldiers there on 3 August 1991; they interrogated the residents but respected their decision about joining or not joining the patrols. However, the local leaders of the PACs in Ical frightened the residents, accusing them of being guerrillas because they were unwilling to join the patrols. They even accused the Catholic Church of supporting the rebel forces, and have created a climate of antagonism towards the Church.

In the village of Xemal in the municipality of Colotenango (Department of Huehuetenango), the representatives of the Archdiocese of Guatemala visited Rafael Sánchez Morales and Remigio Domingo Morales, at the Platanar settlement, who had been abducted and slashed with machetes in 1990 by members of the PAC from Xemal. Remigio Domingo Morales has recovered from his injuries and is now working as a farmer while at the same time participating voluntarily, according to him, in a civilian patrol. Rafael Sánchez Morales on the other hand, has still not recovered from the injuries to his right hand and so is unable to work. He said that his father had been murdered by the guerrillas in 1982. He himself is not participating in the Xemal civilian patrol because he is only 17, but he expressed his desire to join the patrols "so that nothing bad will happen to me", because people take the view that anyone who does not join the patrols is a guerrilla. Consequently, the representatives of the Archdiocese concluded that, although the official reason given for patrolling is to protect the village, the unofficial reason is to avoid being accused of being a guerrilla. Regarding trial No. 1261-90, which was opened in the Second Court of First Instance in Huehuetenango, Alberto Godínez and other members of the Xemal civilian patrol have been charged with inflicting serious injuries on the two young men, although so far no warrant has been issued for their arrest.

67. The representative of the Archdiocese also visited San Rafael Petzal, because on 26 July 1990 the civilian patrolmen Andrés Domingo and Isaías Morales García, together with Lieutenant-colonel Leonel España Urizar, of the Treasury Police, were killed in clashes with members of URNG. He ascertained that, in October 1990, members of the army occupied the football pitch in the village of Oratorio and ordered all the male residents of San Rafael Petzal to report there for training in the use of firearms. Some 800 men, were assembled, whether they were members of the patrols or not, and forced to take part in this training. Since then, the residents have continued to complain that the army is forcing them to take part in the civilian patrols and that they do so because they are afraid of both the soldiers and the members of the patrols.

68. Lastly, the representative of the Archdiocese visited the municipality of Aguacatán (Huehuetenango), where he found that several minors were being forced to take part in the civilian patrols. He was told, for example, that in the village of Río San Juan all the males patrolled from age 16, and although they had recently been informed that patrolling was voluntary, none of them had stopped patrolling for fear of threats to their security. The same representative also visited the municipality of Ixtahuacán (Huehuetenango), where soldiers had arrested the teacher Ricardo Ortiz Jacinto on 21 July 1991. He had abandoned the civilian patrols one month before and as a reprisal he was accused of being a guerrilla. An appeal for a writ of habeas corpus was made to the Supreme Court of Justice and Ricardo Ortiz regained his freedom. Another resident of Ixtahuacán also explained that the residents participated in the civilian patrols because they liked the feeling of power which handling weapons gave them, and because they were afraid of the army.

69. The Guatemalan National Council of Displaced Persons (CONDEG) has denounced forcible recruitment in Cuatro Caminos, in the municipality of San Idelfonso Ixtaguacán (Colotenango), San Pedro Necta and San Sebastián

(Department of Huehuetenango), Escuintla, Santa Lucia, Cotzumalguapa, Masatenango and areas on the outskirts of the capital. They also denounce and object to the forcible recruitment of minors. The Archdiocese of Guatemala has reported that fathers who for any reason are unable to patrol are obliged to send their sons, even if they are minors. On several occasions, the Procurator for Human Rights has declared that the recruitment of minors is illegal and has even publicly censured the Minister of National Defence for the practice.

70. The Guatemalan National Revolutionary United Front (URNG) has also been guilty of excesses in the context of the internal armed conflict. On various occasions it has been accused of threatening the civilian population in an attempt to dissuade them from participating in the civilian self-defence patrols, which are seen as tools of the army in its fight against the insurgents. URNG has also been accused of sabotaging bridges, electricity pylons and pipelines.

71. On 14 May 1991, the Procurator for Human Rights expressed an opinion on the murder of 10 members of the civilian patrols and the wounding of three others in the village of Santo Tomás Playa Grande (Department of El Quiché) on 16 February 1991. His opinion was that the members of the patrol had been ambushed and caught in guerrilla crossfire on the road to Puente Xalbal, where they were going to collect blankets with anti-government slogans left there by guerrillas. In the view of the Procurator for Human Rights, the violent deaths of Fredy Gutierrez García and his nine companions, as well as the wounds sustained by Sebastian Juan, Lucio García Leiva and Santiago González Galicia, constituted violations of the right to life and physical integrity because these were abuses committed by URNG in fighting which violated the humanitarian rules applicable to any armed conflict. He appealed to the rebel leaders to give "genuine evidence of their political determination to participate in the peace process, by refraining from acts which like the one investigated, could only result in more suffering, hatred and rancour".

72. The Human Rights Office of the Archdiocese of Guatemala also investigated the attack on the National Police station in Pueblo Nuevo Viñas (Department of Santa Rosa) on 23 July 1991, when the Chief of Cuilapa Police Station, Pablo Juárez, and police officer Antolín López Arana died and police officers Manuel Cameros and Edgar Umaña Rodríguez were wounded. The Office concluded that the armed group which had launched the attack belonged to the URNG and that neither the destruction of the police station in Pueblo Nuevo Viñas, nor the deaths of the two police officers and the wounding of the other two could be justified as being an attack on a military target, because the victims belonged to the civilian security forces. Consequently, the Office regarded that action as a violation of the humanitarian rules applicable to armed conflict; shortly afterwards, the URNG announced that in future, police stations would not be regarded as military targets. Lastly, the Human Rights Office of the Archdiocese of Guatemala found that URNG elements or URNG deserters had murdered the estate owner Eduardo Ricci Hernández, on 17 Septemer 1991 on the San Lorencito estate 4 kilometres from the municipality of San Francisco Zapotitlán (Department of Suchitepéquez).

B. Refugees, internally displaced persons and returnees

73. During the 1980s, the political-military conflict caused a massive displacement of the mostly indigenous peasant population. These people headed for the mountains, outlying areas, chief towns, departmental capitals and even Guatemala City itself. This constituted an internal displacement, but other persons who were uprooted took refuge in neighbouring countries, including Mexico and Honduras. A displaced person, whether internally displaced or a refugee, is uprooted because of a war situation in his country in which he may have been sympathetic to one of the political-military forces involved or he may have been caught in the crossfire between the two sides.

74. The Guatemalan refugees in Mexico have formed themselves into "Standing Committees" and number some 45,000; they have settled in the Mexican States of Chiapas, Campeche and Quintana Roo. Although during 1991 and in previous years approximately 6,000 persons returned of their own free will and have been helped by UNHCR and the Ad Hoc Committee for Aid to Returnees (CEAR) to resettle in Guatemala, most of them have made their repatriation subject to the following conditions: recognition of their right to return to their original lands; freedom to organize themselves in the place of resettlement; security guarantees by the Government; guarantees that they will not be subject to the military authorities in their place of resettlement, and return to Guatemala on an organized, collective and voluntary basis, escorted by international delegates.

75. In 1991, a "Mediating Agency" was set up to provide liaison between the refugees and the Guatemalan Government. It is composed of the Procurator for Human Rights, a bishop representing the Episcopal Conference of Guatemala, a member of the Guatemalan Human Rights Commission and the Head of the UNHCR Office in Guatemala. The functions of this agency are to promote dialogue between the parties concerning the collective and organized return of refugees in conditions of security and dignity. A "Letter of understanding between the Government of Guatemala and the UNHCR Office concerning the voluntary repatriation of Guatemalan refugees" was signed in Guatemala by both parties on 13 November 1991 and repeats the concern of UNHCR for the safe, dignified and durable reintegration of the returnees. UNHCR will therefore increase the staff of its Office in Guatemala as of 1992 in those areas where the largest number of returnees are concentrated. In pursuance of a comprehensive logistical plan formulated by UNHCR itself, the collective return of some 30,000 refugees will be facilitated during 1992 and 1993. According to the terms of reference of the above-mentioned "Letter of understanding", UNHCR will promote projects on the dissemination of information and training within the framework of the international protection of the refugees and returnees. These projects will mainly target the refugees themselves, the communities to which they return and non-governmental organizations. The Government, for its part, will facilitate the execution of projects which will target public officials, the armed forces and the police; it will ensure that the returnees do not suffer any discrimination in the exercise of their social, civil, political, cultural and economic rights by virtue of the fact that they have been refugees. The Government will also guarantee that the returnees may freely and without pressure choose their place of residence, either individually or as families, or as communities or settlements.

76. In the exercise of its functions, UNHCR may obtain information on the detention or trial of any returnee. The Government will also guarantee that the returnees are not forced to join or participate in any self-defence groups or associations or similar units, or enlisted in the armed forces under conditions not provided for by law. Furthermore, the Government will grant returnees who owned no land when they left the country facilities to purchase land and the legalization of such purchases. On the other hand, returnees who had previously owned or held land will be guaranteed the recovery and legalization of their land or, under an agreement with any new owners, they will be compensated with land of similar quality and situation to that which they originally owned, as well the legalization of ownership of such land. The Goverment will also give assistance in ensuring the proper documentation of the returnees, and of their children born abroad.

77. In order to facilitate the execution of these agreements, the Government will guarantee that UNHCR and the other United Nations agencies participating in the programme of assistance to refugees, returnees and displaced persons are granted the prerogatives and immunities stipulated in the 1946 Convention on the Privileges and Immunities of the United Nations. The Government will also authorize those NGOs, which have legal personality to offer their services to the programmes and projects being carried out jointly with refugees and uprooted populations through a tripartite agreement signed by the organization in question and UNHCR and CEAR. The members of those NGOs which cooperate in this venture will be given the necessary guarantees of security and complete freedom in the performance of their activities.

78. Prior to this, on 20 September 1991, a cooperation agreement was signed between the UNDP project for displaced persons, refugees and returnees (known as PRODERE-Guatemala) and the National Fund for Peace (FONAPAZ). This agreement establishes that PRODERE-Guatemala is a social development programme intended to assist the communities inhabited by refugees, displaced persons and the local population, and to promote local development and the social and economic integration of these communities. To these ends, PRODERE executes technical cooperation programmes through local, governmental and civilian institutions. FONAPAZ is the government agency which coordinates this kind of activity with a view to consolidating the peace process in Guatemala by continually improving the quality of life of the population for whom these programmes are designed. It covers all the groups which, in one way or another, have been affected by the armed conflict, in particular, refugees, returnees, displaced persons, demobilized persons and resettled persons.

79. Within this framework, both parties have agreed to cooperate in devising new strategies to assist uprooted populations, an approach which will serve as a reference point for the formulation of projects in the appropriate areas. The basis of the development models must be peaceful coexistence, with priority being given to the basic services needed to promote sustained development within society. This activity will be a priority in areas of permanent resettlement, such as the places of origin of the populations in the Ixil area and the settlement of the repatriated populations in the Ixcán area. Another priority will be adequate preparation for the resettlement of

the flood of Guatemalan refugees who are expected to return from Mexico. Thus the target communities will be provided with documentation services, community services, schools, housing, health care, occupational and agricultural training, and training in literacy and in the conservation of natural resources. In order to facilitate these projects, FONAPAZ will create a bank of emergency projects in conjuncion with the competent ministries.

80. In harmony with the foregoing, the President of the Republic and the Representative of UNDP signed a "Letter of understanding" on 26 September 1991 reiterating that the top priority of the Government in the search for peace and national reconciliation was the development of a series of initiatives that would afford all Guatemalans full enjoyment of human rights and guarantee the populations uprooted by violence the necessary security to enable them to be reintegrated into social and political life within the framework of the law. Against this background, the "Querétara Agreement" signed on 25 July 1991 by the Government and URNG stated that the return of the Guatemalan refugees, the resettlement of internally displaced persons and the overall resettlement of the populations uprooted by the internal armed conflict were to be given priority. Another measure, which was mentioned before, was the creation of FONAPAZ by the Government in 1991 to formulate and execute projects providing immediate care for the refugees, repatriated, demobilized and resettled population, as well as the other population groups affected by internal armed struggle and to assist in relocation and resettlement work. The "Letter of understanding" mentioned above also recognized the priority to be given by UNDP and PRODERE-Guatemala to encouraging projects covering the whole region which will channel international cooperation for peace and development, especially among the uprooted populations. To this end, the parties agreed that the objective of the technical cooperation would be to alleviate poverty and consolidate the peace and reconciliation processes, with emphasis on activities geared to promoting the social and economic recovery of the areas affected by the armed conflict. Consequently, the parties decided to give priority to strategies to assist uprooted populations which are of a peaceful nature, with a view to comprehensive development, and also to surveying the lands on which these populations are to be settled.

III. CIVIL AND POLITICAL RIGHTS

A. The constitutional framework

81. As already pointed out in the previous report (E/CN.4/1991/5, paras. 17-30 and 49), the Guatemalan Constitution of 1985 is a remarkable instrument. From its very beginning, it makes clear that the raison d'être of the State is to guarantee to everyone under its jurisdiction the conditions of a human life in dignity and honour. To illustrate this solemnly proclaimed attachment to human rights and fundamental freedoms, it suffices to quote the first three articles of the Constitution, which read:

> "Article 1. Protection of the individual. The State of Guatemala is established to protect the individual and the family; its supreme aim is the achievement of the common good.

"Article 2. Duties of the State. It is the duty of the State to guarantee, for the inhabitants of the Republic, life, liberty, justice, security, peace and the full development of the individual.

"Article 3. The right to life. The State guarantees and protects human life from the time of conception, as well as the integrity and security of the person."

82. The specific difficulty Guatemala has been facing for decades and is still facing today is the translation of these lofty principles into a living reality which benefits every citizen of Guatemala. The experiences Guatemala has endured and which have not yet come to an end clearly demonstrate that good law alone does not produce good results. Without appropriate implementation procedures, many provisions will remain a dead letter. However, even technically perfect mechanisms do not guarantee full effect to the legal provisions in force. Institutions and procedures must be activated by human beings, not only by members of the public service, but in the final analysis by every member of society. To safeguard and uphold the rule of law, thereby promoting the general interest, is not only the natural duty of the Government, but falls to the entire national community. To be sure, the primary responsibility lies with the Government, not least because it has the most powerful means of enforcement at its disposal. With regard to his life, personal integrity and freedom, the private citizen is particularly in need of protection, because he is denied the right to take justice into his own hands. Therefore, when in a given society those basic elements of human existence become structurally endangered, the framework of a civilized society may disintegrate altogether. It is saddening to note that Guatemala, even after the coming to power of President Serrano, who has made human rights a pivotal element of his formally proclaimed political aims, has not yet been able significantly to reduce the levels of violent crime and that the number of murders, including extrajudicial executions, forced disappearances and other crimes directed against human life and physical integrity remains high in Guatemala, the statistics having changed very little compared with 1990.

83. As in previous years, only the victims, not the perpetrators of most violent crimes can be accounted for. In 1991, criminal prosecution made little progress in practice. There is still an almost total lack of effective sanctions against persons guilty of even the most serious offences. It may almost be said that the more serious the violation, the lesser the chance that the truth will be found out. This lamentable situation constitutes an alarming threat to the human rights of every citizen, whether violence perpetrated against innocent victims is of a political nature or is attributable to ordinary crime, since it is also the duty of the Government to protect individuals against attacks by third parties.

84. In many instances, a political element is clearly identifiable and provides the only explanation why a specific person became the target of a violent attack. Thus, the assassination of trade union leader Dinora Pérez Valdez on 27 April 1991 can only be interpreted as a warning, by whoever believes in such perverse logic, to the trade union movement in general to moderate its claims. Similarly, the murder on 15 July 1991 of Julio Quevedo Quezada, a close aide of Bishop Cabrera of El Quiché, was generally seen as

an attempt to intimidate the Bishop on account of his activities in support of the Comunidades de Población en Resistencia in the northern part of the Department (see para. 93 below).

85. More controversial are other criteria, such as those used in the report of the Human Rights Office of the Archdiocese of Guatemala, on violations of the right to life, liberty and physical integrity during the period from 2 January to 22 November 1991. In this report, in order to clarify 459 cases of violent death as "extrajudicial executions", the authors rely on "signs of torture or a coup de grâce, the discovery of a victim's body face downward or with hands tied, and the place where the body was found". The Government has criticized this method of counting as deficient and not providing a true picture of the situation. The Expert is unable to give his own judgement. He is convinced, however, that the authors of the disputed report have not only acted in good faith, but also have a good deal of practical experience in assessing the nature of a violent death. Additionally, it should not be overlooked that the report issued by the Procurator for Human Rights also reached similar conclusions, indicating figures which do not significantly deviate from those contained in the report of the Human Rights Office of the Archdiocese of Guatemala.

86. The most difficult question to resolve is to what extent State agencies or public servants were involved in violent crimes. Apart from the abuses committed by civilian self-defence patrols and military commissioners, where often the offenders are well known, most other cases remain under a veil of secrecy as far as the identity of the perpetrators is concerned. What has emerged, however, is an almost constant pattern. Many violent crimes are committed by armed bandits acting in groups of several men, their faces covered by hoods or other devices, who frequently use cars without number plates, according to the testimony of witnesses. The mystery concerning such death squads has never been lifted. Many Guatemalans firmly believe that such units are still attached to the police or to the armed forces, although the Government categorically denies such allegations. Here, the Expert must repeat what he stated in his report of last year (E/CN.4/1991/5, para. 48): even if such violent offenders do not form part of the security forces of the State, it is hardly conceivable that the National Police or the intelligence services of the armed forces are unaware of their activities. It must therefore be one of the main goals of the high levels of the command structure of the National Police and the armed forces, made up of persons enjoying the full confidence of President Serrano, to make sure that no improper actions are carried out by officials of lower rank pursuing their own depraved logic of how law and order should be safeguarded in Guatemala or simply ensuring their own interests. At the same time, care must be taken to prevent any type of connivance being established between security forces and gangs organized by private citizens. Lastly, every effort should be made to ensure that any piece of information concerning violent crimes reaches the responsible Ministers and their aides themselves and does not remain hidden somewhere in the apparatus at an uncontrollable intermediate level.

87. It is with these considerations in mind that the following information about the most serious forms of violent crimes in Guatemala should be read.

B. Right to life, physical integrity and security of person

1. Extrajudicial executions

88. As already stated, one of the serious human rights problems affecting Guatemala for several years now has been that of politically motivated extrajudicial executions. Besides the violence generated by the political-military conflict (see paras. 50-72 above), there has been selective political violence in the form of summary executions. In many cases, the victim is first abducted by force or made to disappear, brought to a secret detention centre, brutally interrogated and tortured, and then extrajudically executed. The perpetrators abandon the body somewhere, or else bury it in a secret grave. Because of the methods used and the type of victim, these executions have political overtones and, according to the persons who report them, are carried out by "death squads" or paramilitary groups. The purpose of all this is the political persecution of dissidents who try to level criticism by peaceful means.

89. The number of persons executed in this manner in 1991 varies, depending on the source consulted. According to the figures given by the Procurator for Human Rights in his report on the first half of 1991, a total of 321 reports of alleged extrajudicial deaths was received by his Office; from this figure he has deducted 33 cases because they are not extrajudicial killings in the strict sense of the term. On the other hand, he found that 116 cases were certainly extrajudicial killings, and the remaining 172 cases were being investigated in order to determine whether or not they were extrajudicial killings. For its part, the Human Rights Office of the Archdiocese of Guatemala recorded a total of 502 cases of violent death between 1 January and 10 October 1991; in 367 of those cases the corpses were identified, and of these 151 were murders. Many of the victims had been killed with firearms, although some had been attacked with sharp instruments or wire or had been suffocated or drowned; in 16 cases it was ascertained that there had been collective extrajudicial executions. The Human Rights Commission of Guatemala, in its report on the first half of 1991, recorded a total of 415 individual extrajudicial executions, as well as 6 cases of collective executions involving 16 victims. Lastly, on 9 October 1991 the Centre for Human Rights Research, Study and Promotion (CIEPRODH) issued a report which stated that it had recorded a total of 342 murders during the period January-September 1991.

90. In many instances, the victims have been members of non-governmental organizations for the protection of human rights or persons connected with them. Thus, the Runujel Junam Ethnic Communities Council (CERJ) reported the extrajudicial executions in 1991 of the following members: Juan Perebal Xirum and Manuel Perebal Morales, murdered by members of civilian self-defence patrols at Chunimá, municipality of Chichicastenango (Department of El Quiché) on 17 February 1991; Pablo and Manuel Ajiataz Chivalán, murdered on 15 March 1991 at Santabal I, municipality of San Pedro Jocopilas; Camilo Ajquí Gimon, murdered on 14 April 1991 at Potrero Viejo, municipality of Zacualpa; Miguel Calel, murdered on 19 April 1991 at Santabal I, municipality of San Pedro Jocopila (Department of El Quiché); according to his mother, the perpetrators were members of the civilian self-defence patrols; Tomás Ventura Xon, murdered on 24 June 1991; and Celestino Julaj Vicente,

murdered on 28 June 1991 at San Pedro Jocopilas (Department of El Quiché); his relatives also claim that he was murdered by members of the civilian self-defence patrols.

91. Members of trade union organizations have also fallen victim to extrajudicial executions. Thus, for example, on 9 August 1991, the bodies of 11 people were found on the Escuintla to Taxisco road in the Department of Santa Rosa. Five of them were members of the Surveys and Customs Union. In this case, the army itself issued a press release charging the Commander and members of the Pacific Naval Base with the crime (see para. 45 above and para. 152 below). On 29 April 1991, Dinora Gosseth Pérez Valdez, aged 28, was murdered. She was a trade union leader who had run for the office of deputy in the most recent general elections; two armed men shot her without warning as she was preparing to park her car in front of her home in Guatemala City.

92. The Association of University Students (AEU) reported the murder of Oscar O. Luna by heavily armed men in front of his home in Guatemala City on 26 June 1991. Among local officials, the murder of Tulio Collado Pardo, Mayor of Escuintla, should be highlighted. He had received death threats before being shot 11 times and killed on 5 January 1991. Another case of murder was that of the teacher Byron Jo Polanco on 28 February 1991 at Jutiapa; his body was found in a car with bullet wounds. On 15 May 1991, Salvador Nanchoc Chavajay, Municipal Secretary of the Revolutionary Party in Sololá, was also murdered.

93. Members of the churches have also been targets of this selective violence. On 29 April 1991, the Spanish monk Moisés Cisneros Rodríguez was found with his throat slit in the storeroom of the Marist School of which he was in charge. Two unidentified men had entered the school for the sole purpose of carrying out this treacherous crime. The victim had founded the Marist community and worked in the Diocese of El Quiché helping widows and displaced persons among others. Another case to be highlighted was the shooting to death of the agricultural expert Julio Quevedo Quezada by two unknown persons on the night of 15 July 1991 as he was walking home with his family (see para. 84 above). Mr. Quevedo, who was an associate of Monsignor Julio Cabrera Ovalle, Bishop of El Quiché, had a strong social conscience and promoted development programmes. He had worked with Caritas in the Diocese of El Quiché and had cooperated on the emergency plan to assist displaced persons in the Ixil area. While working there, he had received a number of death threats, such as those which had been scrawled on the walls of houses in Santa Cruz del Quiché. In February 1991 anonymous threatening letters called upon him to resign. The Director of Caritas had also received letters accusing Mr. Quevedo of corruption. One of them had been signed by the self-styled "Fundación en Pro de la Justicia". Lastly, on 20 October 1991, Marco Antonio Sinaí Morales, a member of the youth association of the San Juan 3-16 Evangelical Church, was stabbed to death by a group of unknown persons in the village of El Porvenir, Villa Canales.

94. Peasants have also been the victims of extrajudicial executions, as in the massacre on 18 October 1991 of 10 members of one family in the village of Volcancillo in the municipality of Cubulco (Department of Baja Verapaz). The victims were: José Rosales Perez, Celestina Avila de Rosales and her children

Lorenzo, Paulo, Catalina, Jerónimo, Ana, José, Emilio and Feliciana. Four of the children murdered were between two and nine years old. Another case was the execution of the couple Gregorio Casado and María Lucrecia Salam at San Pedro Yepocapa (Department of Chimaltenango).

95. In 1991, more "street children" were murdered. One of them was Francisco Chacón Torres, aged 15, who was walking with another boy in Zone 9 in Guatemala City on 28 April 1991 when they heard gunshots. One hit Francisco in his left eye killing him instantly. Two private security guards employed by a synagogue are the prime suspects because they had already threatened the boys; after the shooting they ran away. The Casa Alianza organization lodged a complaint with the Magistrates' Court. Again, on 31 July 1991, in a refuse bin by an electricity pylon in Zone 3 in Guatemala City, the tortured body of an unidentified street child was found. Apparently his eyes had been gouged out and his head beaten and battered so violently that he could not be identified. Casa Alianza representatives called upon the competent authorities to conduct an investigation into the boy's death.

96. Lastly, there was the murder on 5 August 1991 of José Miguel Mérida Escobar, aged 36, who was head of the Homicide Section of the National Police Criminal Investigation Department. He was shot several times by a man in plain clothes who came up to him as he was walking along the street with his family near his office right in the centre of Guatemala City. Mérida Escobar had been in charge of the investigation of the murder of the anthropologist Myrna Mack Chang on 11 September 1990 in which security forces had allegedly been involved. In June 1991 he had informed the court responsible for investigating Myrna Mack's murder that high-level military officers had been involved in the murder. On the basis of this statement, the court had issued two arrest warrants on 28 June 1991, one for a member of the security forces. Mérida Escobar had promised to cooperate with the court in clearing up the case, but he had felt threatened since he had requested guarantees and assistance in leaving the country with his family. At the time of his murder, he was preparing to go and testify before the Inter-American Commission on Human Rights in Washington regarding the murder of Myrna Mack.

2. Enforced disappearances

97. In Guatemala, the phenomena of unacknowledged detention, abduction and enforced or involuntary detention and disappearance still persist, in many cases as forms of political persecution. The latest report of the United Nations Commission on Human Rights Working Group on Enforced or Involuntary Disappearances states that, over the past 11 years, the Working Group referred a total of 3,119 cases of presumed detentions and disappearances to the Government (E/CN.4/1992/18, para. 165); of these, 30 cases allegedly occurred during 1991. The Government, in conjunction with the Working Group, cleared up 50 cases (including those of four persons who had died) and non-governmental sources helped to clear up a further 75 cases (including 27 people who had been found dead). According to the Working Group, 2,994 cases of disappearances were still pending at the end of 1991. It therefore requested the Government to appoint an official commission to investigate the disappearances, because neither the Judiciary nor the police

had conducted thorough investigations into the cases reported. As far as the cases reported in 1991 are concerned, most of them occurred in the Departments of El Quiché, Escuintla, San Marcos and Guatemala City. The persons presumed responsible for these disappearances are apparently members of the armed forces (10 cases) or were armed men dressed in civilian clothing but acting with such impunity that they were believed to have links with security forces (17 cases). The methods used to make people disappear are similar to those used in previous years: persons are abducted and taken away in vehicles without licence plates and with darkened windows. The habeas corpus proceedings brought by the relatives have proved ineffective in the great majority of cases because the authorities are not diligent in their investigations. Sometimes, judicial officials and even the victim's relatives are threatened or subjected to persecution if they persist in their inquiries.

98. According to figures compiled by the Human Rights Office of the Archdiocese of Guatemala, during the period 1 January to 22 November 1991, 143 cases of disappearances were recorded: of these, 78 were perpetrated by unknown persons who were hooded and armed and driving vehicles without licence plates; in the remaining 65 cases, the victims left their homes and did not return.

99. The Procurator for Human Rights, in his report for the period 1 January to 30 June 1991, stated that he had received a total of 80 reports of enforced disappearances. Of these, 5 cases have been resolved because the persons in question turned up alive and in 14 cases bodies were found, which makes a total of 19 cases solved. Investigations of a further 34 cases have been undertaken in order to determine whether or not they should be classified as enforced disappearances. The remaining 27 cases were finally classified as disappearances.

100. During the same period, the Mutual Support Group (GAM) reported that there had been 119 cases of disappearances. CIEPRODH, however, reported 42 cases of disappearances and classified them as being somewhat different from the cases of persons who had been abducted and released (9), abducted, tortured and released (2), and abducted and murdered (27). Lastly, for the same period, the Human Rights Commission of Guatemala reported 65 cases of persons who had been detained and had disappeared.

101. In 1991, various organizations called for the establishment of a commission to investigate the cases of enforced disappearances. By decision No. 1-91 of 22 February 1991 and at the request of the Mutual Support Group, the Procurator for Human Rights established the Commission to Investigate Disappearances within his Office. The Commission is composed of the Procurator for Human Rights, Deputy Procurators and Advisers. Article 2 of the decision provides that the Commission shall receive the report of national and international non-governmental organizations, and that it shall establish contacts with organizations such as the churches, the bar association and the Mutual Support Group itself. By decision No. 2-91 of 13 May 1991, the Procurator approved the Commission's rules of procedure, rule 6 of which establishes that the national organizations which support the Commission and are recognized as such by the Procurator shall appoint a representative and an alternate to the Commission. Rule 7 provides that international organizations may accredit a representative to the Office of

the Procurator. The representatives of the national and international organizations which support the Commission may express their opinions and make any suggestions they deem appropriate, and contribute any technical or scientific studies the Commission may request of them (rule 8). Although these representatives may express opinions during the working meetings, any decisions and resolutions adopted will be within the exclusive competence of the Procurator (rule 9).

102. The Commission submitted the first report on its activities on 28 June 1991. The report highlighted the meeting held on 3 May 1991 with representatives of the Mutual Support Group, at which it was agreed that the Group would be included among the supporting organizations. After the Commission's plan of work was drafted, the Group expressed its disagreement with the composition of the Commission, because organizations like itself were not regarded as integral parts of the Commission but as supporting organizations. The Group therefore proposed that a new national commission to investigate detentions and disappearances should be established, but the Procurator for Human Rights rejected the proposal. The Group subsequently submitted its proposal to Congress, which is now considering it. The proposal provides for access to documents, records and places of detention, including those under the control of the security forces, and makes it obligatory for the authorities and the security and police forces to collaborate with the Commission. It further provides that the concealment of evidence should be reported and that the identity of persons cooperating with the Commission should be kept strictly confidential.

103. As regard the victims of detention and disappearances during 1991, the report mentioned the cases of members of human rights organizations, such as Santos Toj Reynoso, a fruit vendor who worked for the CERJ. He had been threatened by a civilian self-defence patrol because of his involvement in human rights activities and was abducted on 26 May 1991 in Zone 4 in Guatemala City by unidentified men in civilian clothing; since then his whereabouts have been unknown. The Guatemalan Widows' National Coordinating Committee (CONAVIGUA) has also reported the abduction and disappearance of Mardoquero de la Cruz Gómez, the grandson of one of its members, Julia Gómez, who was taken into custody by members of the army and the civilian self-defence patrols in Las Trampas on 27 March 1991.

104. Several students have also been detained and have disappeared, including Claudia Estrada, whose case was reported by AEU. She was allegedly abducted on 12 August 1991 by paramilitary groups in Mazatenango and her whereabouts are unknown. The GAM reported that Gregorio García Lopez, a 14-year-old schoolboy, was abducted at Mezquintel in Zone 12 in Guatemala City; Eduardo Gil Ramirez, a 15-year-old schoolboy, was also abducted by armed men in motor vehicles on 28 September 1991 in Guatemala City; Cleofe Fabian Zaunches was abducted on 16 March 1991 in the San Antonio district (the case is being investigated by the Seventh Magistrates' Court); Tomás Osorio González, a businessman, disappeared in Rabinal, San Pedro Carcha; the whereabouts of Gloria Guerra Morales of Montenegro have been unknown since 14 March 1991; María Luisa Ovalle Galindo, a housewife, was abducted and has been missing since 6 April 1991; her husband had also been abducted; Gaspar Chavez Gonón, a farmer, was presumed abducted by army personnel from Military Base No. 22.

3. Torture and ill-treatment

105. Torture is a common feature in many violent deaths. More often than not, the bodies of persons sequestrated by unknown groups of armed men are later found with signs of torture having been inflicted on the victims before they were eventually killed. Since almost none of these cases has been clarified, the perpetrators have not been brought to trial. Responsibility has thus remained undetermined, notwithstanding evidence in many cases suggesting that members of the security forces were involved.

106. In some instances, however, it has emerged that acts of torture were committed by officers of the National Police or other State agents. In the first place, mention should be made of the case of the three detainees, Carlos Rosales Chaves, Francisco Castillo García and Exequiel Trujillo Hernández, who were arrested on 25 August 1991 while driving along a street in the centre of Guatemala City. Their vehicle was stopped by two other vehicles, from which members of the National Police got out shouting "We won't have this one stuck on us". The victims were taken to Zone 6 Police Station, where they were interrogated and beaten for an hour. Shortly after, they were transferred to the Homicide Squad of the Directorate-General of the National Police, where they were blindfolded and interrogated separately. All three of them were severely beaten with sticks all over their bodies and pressured into accepting responsibility for serious offences. They were also threatened with death, had lighted cigarettes stubbed into their backs and given electric shocks.

107. The three detainees were forced to put their hands into a receptacle containing hot paraffin, which caused excruciating pain and deep scalds. The Expert was able to see the scars for himself when he visited the detainees on 5 October 1991 at the Pavoncito Constitutional Rehabilitation Centre, where he had private interviews with each of them. The Procurator for Human Rights issued a decision in which he expressed the view that the use of torture by police officers during the interrogation of the three victims had been proved, condemned the incident, and urged the administrative and judicial authorities to carry out a thorough investigation to elucidate the facts, identify those responsible and punish them in accordance with the law. As a result of these developments, on the Expert's recommendation, the President of the Republic decided to replace the Director of the National Police, who at the time was a military officer. As to the three torture victims, in the view of the Expert, a thorough investigation should be carried out to establish their responsibility for the serious acts with which they are charged and on account of which they are in custody; the statements unlawfully obtained from them should not be used in evidence. In the meantime, they should be treated with dignity in their places of detention, given proper medical care for their wounds and for the psychological consequences of torture, and compensated for the acts of torture they have suffered.

108. Regarding the number of cases of torture and ill-treatment recorded in 1991, in his report for the first six months of 1991 the Procurator for Human Rights mentions the figure of 50 cases of "abuse of authority". According to article 425 of the Penal Code, "abuse against individuals" designates an offence committed by an official or public employee who orders unjustified coercion, torture, degrading punishment, humiliation or measures

not authorized by law against a prisoner or detainee. The offence carries a prison sentence of two to five years and general disqualification; the same sentence applies to those who carry out such orders. The report, dated 9 October 1991 and issued by the Centre for Human Rights Research, Study and Promotion (CIEPRODH), lists a total of 46 cases of torture between January and September 1991, although it does not specify the definition of torture adopted by the organization.

109. On 24 January 1991, the Procurator for Human Rights issued a decision identifying the commander of the military detachment in the town of Los Amates (Department of Izabal) as responsible for the torture of three persons: Faustino Gómez Palma, Gonzalo Gómez Castro and Celedonio Pérez. They had been arrested on 18 November 1990 by seven soldiers under the command of the above-mentioned officer and taken to the detachment's headquarters. Clear signs of injury were apparent on the victims' necks and mouths, attributable to the use of ropes and blunt instruments against the soft part of their palates, together with bleeding gunshot wounds on their scalps. There was apparently a dispute over land-ownership between the villages from which the tortured peasants originated and a group of military personnel and military commissioners, as a result of which personnel from the base in Izabal and from the detachment in Los Amates had threatened and intimidated the peasants. Shortly after this incident, on 19 January 1991, Celedonio Pérez was brutally murdered. Luis Méndez Pérez, Amado Duarte and Tulio Almazán, adjutants to Delfino Náguera García, a military commissioner, were charged with the murder. Consequently, the Procurator for Human Rights requested the Ministry of Defence to carry out a thorough investigation of the cases in order to identify those involved in the acts of torture, censured the Commander of No. 6 military zone and the members of the military detachment in Los Amates, recommended that such behaviour should be reviewed and closely monitored, and requested that the necessary investigation be carried out into the murder of Celedonio Pérez.

110. On 16 June 1991, the Human Rights Office of the Archdiocese of Guatemala informed the media that Julio Chalcú Ben, 23 years of age, was in Escuintla hospital, where he had been taken on 27 December 1990 unconscious and suffering from paralysis of the right-hand side of his body. After gradually recovering the ability to write and speak he stated that on 16 December 1990 he had been arrested by five military officers in his village of Sacsiguán, Sololá municipality (Department of Sololá), gagged, and taken to Military Police Flying Squad headquarters and subsequently to military zone No. 14 in Sololá. There his hands and feet were bound and he was kept in a dark room for 11 days without food or water. He was regularly interrogated, threatened and beaten, and on the last day of his detention he was stabbed in the neck and abdomen with a knife; he also received heavy blows to the head which caused partial paralysis of the right side of his body. As a result of the blows and wounds, he lost consciousness and was left on a road near Escuintla, where he was picked up and taken to the local hospital.

111. The same Human Rights Office investigated the case of Otto Ivan Rodriguez Vanegas, former President of the Union of National Electricity Board Workers (STINDE). According to his statement, in April 1991 he was preparing to go into voluntary exile because he felt threatened on account of his trade union and political activities. On 5 April 1991, he was arrested by two policemen

on the highway on his way back from a visit to his family in the village of Santa Elena, Chiquimula municipality, and taken to the police station, where he was interrogated about his union activities by the local police chief and three other policemen. When he failed to answer their questions, they beat him and burnt his back with cigarettes. A hood was then placed over his head, he was kicked on his eyebrow and fainted. When he came round, the policemen placed him in the hands of the courts on charges of involvement in the theft of a vehicle, and on the following day he was transferred to the Zone 18 Pre-trial Detention Centre in Guatemala City. An application for habeas corpus on his behalf before the Third Criminal Court of First Instance of Guatemala was accepted and he was released. However, the investigation into the alleged torture by the Justice of the Peace of Chiquimula has made no headway.

112. In 1991 several street children also suffered serious physical assault. On 1 August 1991 Edwin Esteban Rodríguez García, aged 15, was arrested in Guatemala City by two uniformed police officers as he attempted to run away from a person whose sunglasses he had stolen. He was pushed into a van, into which two unidentified persons in civilian dress, possibly detectives, then climbed, and taken to a secret place of detention in the vicinity of the suburb of Mixco, where he was repeatedly beaten on different parts of his body and burnt with cigarettes on the chest, back and testicles. He was then abandoned and his tormentors fled. He suffered bruising and an open wound to the head.

113. On 9 August 1991 Carlos Hernández, aged 16, and his 15-year-old companion nicknamed "Caballo", both of them street children, were shot at without warning as they sat under Amate bridge on 19th Street, Zone 1, in Guatemala City. The shots came from an unmarked van occupied by two armed men in civilian dress: Carlos Hernández was hit in the right thigh but "Caballo" was uninjured. Walter Federico Flores, aged 17, was arrested on 23 October 1991 by two officers of the National Police College at a place known as "El Botellón" in Zone 1, Guatemala City. He was asked for his identity papers, which he apparently refused to show, and one of the officers hit him three times on the head and once on the right-hand cheek with his baton, stunning him and knocking him to the ground. The other officer then kicked him in the stomach, his right ribs, his arms and his left leg until he lost consciousness. When he came to, he was lying on the ground under a bridge at the intersection between 19th Street and 4th Avenue in Zone 1, Guatemala City. He had been robbed of what little money he had on him and left bleeding. After having been turned away from Rafael Ayau Children's Home and refused assistance, he went to the refuge of the Casa Alianza organization, where he was given attention and it was decided to send him to hospital.

114. On 5 October 1991, the Expert visited No. 18 Pre-trial Detention Centre in Guatemala City, where he had a private interview with Gonzalo Cifuentes Estrada, who told him that on 27 August 1991 he had been arrested in the street by five individuals in civilian clothes. He had been blindfolded and driven by his captors to an unknown place where he was interrogated about an alleged car theft and then about the assassination of Mr. Mérida Escobar, Chief of the Homicide Section of the National Police and responsible,

inter alia, for the investigation into the murder of the anthropologist Myrna Mack Chang (see para. 96 above). He was subjected to intensive interrogation for four hours, in the course of which his captors threatened that he or members of his family, who live in the village of La Democracia, Huatepéquez municipality (Department of Quetzaltenango) would disappear or be executed if he refused to confess to the assassination of Mr. Mérida. Although he did not know Mr. Mérida, he gave in to this pressure and accepted his interrogators' demands; he was forced to memorize a self-incriminatory statement, of which a video-recording was then made in the secret place of detention where he had been interrogated. Shortly after, he was moved to the National Police headquarters, where his blindfold was removed and he noted that his captors and interrogators were wearing civilian clothes. As soon as he was handed over to the National Police, a statement was taken and he was sent to the Detention Centre, where he is still in custody. The video-recording of the self-incriminatory statement by Gonzalo Cifuentes was released by the police to the media, which gave it wide publicity, together with police statements representing Gonzalo Cifuentes as the murderer of Mr. Mérida Escobar, thereby violating the principle that an accused person shall be presumed innocent until found guilty by a court. Thirty-eight days after these events, the Expert noted that Gonzalo Cifuentes was still terrified in his place of detention and that he had received no assistance from a lawyer in connection with the proceedings against him, nor had he been receiving regular visits from his family. In these circumstances, the Expert considers that a thorough investigation should be carried out in order to identify the secret place of detention to which Gonzalo Cifuentes was taken (there is some evidence that it belongs to the Military Police Flying Squad) and to determine whether or not he was involved in the assassination of Mr. Mérida Escobar.

4. Threats and intimidation

115. For many years there has been a widespread climate of violence in Guatemala, and this is also reflected in the high incidence of threats and acts of intimidation. The number of cases reported in 1991 varies depending on the source. According to the Centre for Human Rights Research, Study and Promotion (CIEPRODH), between January and September 1991 148 cases of threats and intimidation were recorded, 110 of which involved death threats. The Procurator for Human Rights reported that 103 cases involving threats were recorded in the first six months of 1991. The Human Rights Commission of Guatemala, however, recorded 356 cases involving various types of threat and intimidation.

116. The victims come from all walks of life, although complaints of threats against individuals connected with non-governmental human rights organizations are commonplace. The Guatemalan Widows' National Coordinating Committee (CONAVIGUA), which represents approximately 50,000 widows and 250,000 orphans resulting from the violence, has repeatedly denounced the threats made against many of its members, which are attributed to military commissioners, chiefs of civilian self-defence patrols or soldiers. As an illustration, on 17 May 1991 three army commissioners, Octavio Cano Martínez from Canton Cabic, Baltasar Domingo from Canton Sabino and Caralampio López Velázquez from Canton Linares de Pelalán (Department of Huehuetenango), threatened to

abduct and murder a number of widows, including Ana Ramírez, on account of their involvement in community activities. In addition, a complaint was made on 28 June 1991 to the office of the Deputy Procurator for Human Rights in Quiché that patrol leaders in the areas of Choraxaj and Joyabaj had threatened Gregorio Rey Castro, Catarino Juárez and other members of CONAVIGUA, whom they had accused of subversion. In June and July 1991, Lucía Quilá and her children were followed in a vehicle and threatened with death. In Zacualpa Baja and Santa Cruz, several widows complained that they had been subjected to harsh interrogation. At 12.05 a.m. on 28 July 1991, the National Police searched the CONAVIGUA offices, apparently with the intention of abducting two of its members, Rosalina Tuyucz and María Morales; the latter, a leader of the organization, was intercepted by several men claiming to be police officers, who, after questioning her about her work, warned her that her life would be in danger if she did not give up working for the organization. Lastly, on 2 August 1991 patrolmen in Canton Chontelá (El Quiché) threatened 22 families to discourage them from searching for clandestine graveyards.

117. The Mutual Support Group (GAM) in turn reported that 50 of its members had been threatened, essentially because of complaints made by them against patrolman Santos Coj. In particular, Luisa Ruiz Saquic and 11 other inhabitants of Tuanaja, Sacualpa municipality (Department of Quiché) were threatened for the reason mentioned above by civilian self-defence patrolmen. The victims are reportedly witnesses in proceedings against Santos Coj Rodríguez and other members of the patrols, who are accused of torturing and murdering several relatives of the inhabitants of Tuanaja in previous years. In April 1989, a clandestine graveyard containing the bodies of eight of the murder victims was discovered in Tuanaja. Santos Coj Rodríguez was arrested in June 1991, although he has reportedly escaped. Shortly after his escape, Luisa Ruíz and the other witnesses received further death threats. As a result, Luisa Ruíz and another member of GAM decided to take refuge in their organization's offices in Guatemala City, which were entered by six armed men on 7 November 1991 in an attempt at intimidation.

118. The Runujel Junam Ethnic Communities Council (CERJ) reported that on 15 May 1991 patrolmen from San Pedro Jocopilas warned CERJ members not to attend a festival in the town. The local inhabitants also complained that they had been threatened by the Guatemalan National Revolutionary United Front (URNG) to dissuade them from participating in the civilian self-defence patrols. On 14 April 1991, another member of CERJ, Alejando Vásquez Cua, received a death threat from an army officer in charge of a group of 45 soldiers, who forced him to leave his home and to kneel in front of him; this incident occurred in the village of Xepac, Tecpán municipality (Department of Chimaltenango). The victim's relatives were accused by the soldiers of collaborating with the guerrillas. And on 6 May 1991, another member of CERJ, Miguel Sucuqui Mejía and his family received death threats from members of civilian self-defence patrols in his village of Sacpulup, Chichicastenango municipality (Department of Quiché).

119. Amílcar Méndez Urízar himself, the leader of CERJ, received repeated death threats and warnings throughout 1991. All of them were intended to force him to give up his activity as leader of this indigenous peasant organization. On 15 April 1991, he received death threats at his home in

Guatemala City when four armed men, possibly members of the security services, went there to arrest him and, in his absence, made threats and left. Subsequently, on 16 May 1991, Amílcar Méndez received anonymous telephone death threats at his home; on this occasion, the threats were also made against his wife and children. Later, on 24 August 1991, he received a letter sent to the offices of his organization in Guatemala City and signed by the "Jaguar Justiciero" death squad. The letter accused him of collaborating with "the URNG traitors", and told him that he had "10 days left to live", because he had been "sentenced to death" for of his involvement with "communism". A few days later, on 29 August 1991, two men in army uniform and two others in civilian clothes went to his sister's home in Guatemala City and again asked his whereabouts. When Amílcar Méndez, who was not there at the time, heard of this incident, he checked with the Minister of the Interior himself that the visitors had not been sent by him. As a result of these persistent and serious threats against his life and the lives of his family members, Amílcar Méndez decided to leave the country and moved to the United States for three months. CERJ drew attention to statements allegedly made by the President of the Republic in Washington on 30 September 1991, when he described Amílcar Méndez and CERJ itself as "travelling on a parallel course with insurgent groups" in Guatemala.

120. The serious nature of the threats received by various members of CERJ led the Inter-American Commission on Human Rights to request the Inter-American Court of Human Rights to adopt temporary protective measures. Accordingly, on 1 August 1991, the Court decided to adopt temporary measures in respect of Amílcar Méndez Urízar and 11 other members of CERJ (Diego Perebal León, José Velásquez Morales, Rafaela Capir Pérez, Manuel Suy Perebal, José Suy Morales, Justina Tzoc Chinol, Manuel Mejía Tol, Miguel Sucuqui Mejía, Juan Tum Mejía, Claudia Quiñonez and Pedro Iscaya) who had sought protection in their organization's headquarters in Santa Cruz del Quiché. In addition, the protective measures requested of the Government of Guatemala by the Inter-American Court extended to Judge Roberto Lemus Garza and Judge María Antonieta Torres Arce, who had received repeated death threats when, in their professional capacity, they had been investigating the alleged involvement of members of civilian self-defence patrols in the threats against the peasants mentioned above. Despite the protective measures adopted by the Government, Amílcar Méndez was, as already mentioned, forced to leave the country, as was Judge Roberto Lemus. Judge María Antonieta Torres was transferred to the post of Justice of the Peace in the town of Antigua. The Inter-American Court decided to lift the temporary protective measures as from 3 December 1991.

121. Another case involved the Chairman of the non-governmental Human Rights Commission of Guatemala, Gabino Quemé, who reported threats against his own life and acts of intimidation against several members of his organization, including José Antonio Estrada Alpirez, a high-ranking official of Radio Nacional, for their membership of the organization. Estrada has allegedly suffered thefts, had his car followed, been attacked and received a number of telephone calls warning him to leave the country. His case was reported to the Sixth Criminal Court of First Instance (case No. 3486-88). Mr. Quemé has rejected the accusations made by the army linking him with guerrilla groups and has denied being affiliated to any particular ideology.

122. The Casa Alianza organization, which provides protection for street children, was also the victim of serious threats and intimidation in 1991. According to information from the organization, it filed 35 complaints against the National Police for abuse of minors, 3 against members of the Treasury Police, 10 against civilians and 3 against judges; all the complaints are still before the courts. Death threats were made against witnesses to the acts of abuse reported and some of them, such as Axel Mejía, who received several telephone death threats on 28 and 30 April 1991, have been forced into exile. In addition, the work of Casa Alianza was obstructed on a number of occasions by threats and intimidation: thus, on 12 July 1991 two shots were fired into the air in the immediate vicinity of its headquarters; six days later, death threats were made against the organization's director, Bruce Harris, and the children themselves, and five more shots were fired into the air despite the presence of children at the home. In view of the numerous cases of abuse against minors, Casa Alianza opened a legal support office for minors, but its closure was ordered on 7 August 1991 by the Coordinating Juvenile Court, on the grounds that the office's work in support of children encroached upon the authority of the Public Prosecutor. Amparo proceedings were initiated against the measure, and the decision to close the office was annulled. The incident was finally resolved when Casa Alianza and its legal office were given the status of an "auxiliary office" of the Attorney-General of the Republic (see paras. 28 and 38 above).

123. A number of trade union leaders have also received death threats, which have forced 20 of them into exile. Attention should be drawn to the case of Byron Morales, Secretary-General of the Guatemalan Workers' Union (UNSINTRAGUA), who received telephone death threats at his office on 12 April 1991. In addition, other union leaders - Rosendo de León Dubón, Mauricio Raxcacó Henríquez, Armando Sánchez and David Montejo - received death threats in April and June 1991. On 19 August 1991, an attempt was also made to abduct Mauricio Raxcacó, as a result of which he decided to leave the country. On 10 September 1991, Armando Sánchez and David Montejo, leaders of the National Federation of Guatemalan State Employees (FENESTAG), also received anonymous telephone threats at their homes, telling them that if they did not leave the country within 72 hours they would be murdered.

124. The Oliverio Castañeda de León Association of University Students (AEU) of the University of San Carlos has complained that since April 1991 some of its members have been followed and intimidated by individuals who they think are plain-clothes policemen. On 29 June and 13 July 1991, such individuals visited the homes of the Association's Secretary-General, Otto Peralta, and Carmen Reina and questioned them about their activities within the Association. On an earlier occasion they had identified themselves as policemen. The Association also reported that in July and August 1991 it had received telephone death threats against four of its leaders. Several attempts were made to intimidate a student, Douglas Giovanni Mazariegos Marroquín, a member of the Association, who had testified before the forty-seventh session of the Commission on Human Rights in Geneva; shots were fired in the vicinity of his flat and he was spied on from unmarked vehicles. His home was even searched on 23 and 29 October 1991. In addition, three leaders of the Secondary School Students' Coordinating Committee (CEEM) said

that they had been threatened by armed men, whom they believed to be members of the State security forces because of the way in which they operated. Finally, the Guatemalan Education Workers' Union (STEG) reported threats against a number of teachers, including Claudia Patricia Estrada Ochoa, Wosveli Ulises Ruiz Teller, Roy Edgardo Alvarez, César Mancelio Cano Fuentes, Carlos Higueros Giguenza and Hugo Girón, some of whom have been forced into exile.

125. Representatives of the Church have also suffered threats and intimidation. Thus, the Human Rights Office of the Archdiocese of Guatemala reported that on 5 November 1991 three unidentified and hooded men dressed in black searched the headquarters of the Congregation of Dominican Nuns of the Annunciation, located in Zone 3, Guatemala City. One of the men dragged Sisters Vilma Martínez, Miriam Alvarez and Floridalma Pelico from their rooms, and threatened and beat them. One of the nuns escaped and called the police from a nearby house, only to be told that the police could not come because there was a power cut at the time. Finally, the police came one hour later, and found that three rooms in the house had been searched and that 1,000 quetzales and an alarm clock had been stolen. The Congregation's premises were again searched on 10 November 1991 while the sisters were away. When they returned, they found in the Superior's room an anonymous note reading "We want Vilma Alba Méndez" (the Superior).

126. The Guatemalan National Council of Displaced Persons (CONDEG) has also reported threats and intimidation in rural areas, apparently attributable to attempts by military personnel to compel peasants to join the civilian self-defence patrols.

127. Threats have also been made against members of the Judiciary and their professional activities interfered with. On 4 October 1991, the President of the Judiciary himself made a public announcement to the effect that a number of courts were to be closed on account of heavy pressure and threats from army personnel. Several judges received death threats and were compelled to resign, as were members of the National Police who attempted to investigate certain murders with political overtones. The most significant case concerns the circumstances of the investigations into the murder of the anthropologist Myrna Mack Chang; several judges and policemen working on the case received such serious threats that they decided to resign. It will be recalled that the main police investigator on the case, Mr. Mérida Escobar, was murdered by an unknown person in the heart of Guatemala City (see para. 96 above). The case of the President of the Antigua Court of Appeal, Raúl Sao Villagran, who was abducted in July 1991 in Guatemala City, should also be mentioned; his body was found two days later bearing marks of torture.

128. In 1991 the threats and intimidation have even extended to members of the international community working in Guatemala. In this connection, attention should be drawn to the anonymous telephone death threats received on 13 November 1991 by the Representative and a staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Guatemala. The President of the Republic condemned the threats, provided the UNHCR Office in Guatemala with the necessary protection and urged its staff members to pursue their worthy task.

129. The Expert himself and his escorting staff (members of the United Nations Centre for Human Rights) were surprised to read in a local newspaper that during their stay in Guatemala a powerful bomb had been defused in the very hotel in which they were staying. In addition, elsewhere in this report, reference is made to the incident caused in Cabá by military aircraft which buzzed the area where the Expert and his staff were interviewing members of the Comunidades de Población en Resistencia (CPRs).

5. Secret graveyards

130. One of the main events in Guatemala in 1991 has been the discovery of secret mass graves where victims of the tragic internal strife during the years from 1979 to 1982 were buried. Of course, many people, the perpetrators of the killings as well as close relatives of the victims, had always known the sites of these graves. But for many years, the relatives did not dare to raise the issue for fear of reprisals. Between 31 July and 17 September 1991, the remains of 27 persons were exhumed near Chontalá, a commune in the vicinity of Chichicastenango, and later, on 29 October 1991, buried in the cemetery of Chichicastenango. Almost all of the victims had been shot. The team of forensic pathologists encountered considerable difficulties in their work. For a while, members of the local civilian self-defence patrol blocked access to Chontalá. At the same time, they threatened and intimidated the relatives of the victims in order to prevent them from providing testimony as to the precise site of the graves.

131. The Mutual Support Group (GAM) and the Guatemalan Widows' National Coordinating Committee (CONAVIGUA) are pressing for a continuation of the work begun in Chontalá. In fact, many more secret graveyards have been found since then. On 22 November 1991, a grave with the remains of 11 human beings was found by accident near El Pujuilito, Department of Sololá. Other discoveries of the same kind were made two days later in the commune of Pojolil in the same Department (five victims) as well as on 29 November 1991 in the boroughs of Tumujá and Chuguexa in the communes of Zacualpa and Chichicastenango (60 victims). Within the framework of the talks between the Government and the Guatemalan National Revolutionary United Front (URNG) the issue of clandestine mass graves plays an important role as well. As has already been indicated, URNG has requested the setting-up of a "Commission of Truth and Justice" to clarify any kind of violations of human rights between 1978 and the present time. This request became one of the stumbling-blocks of the fifth round of negotiations in October 1991.

C. Freedom of expression

132. In the course of his three visits to Guatemala, the Expert has found that by and large freedom of the press exists, as there are several national newspapers which enable the population to learn about newsworthy events, regardless of whether they are favourable to the Government or not; disappearances and extrajudicial executions are even given special attention by the newspapers. However, the Expert saw no detailed analyses of responsibility for politically motivated crimes, as journalists are apparently afraid to publicly set out their views on such matters. Indeed, like anyone who publicly denounces injustice or abuse and points his finger at unlawful centres of power, or who merely proposes radical reform, journalists may fear for their lives.

133. In 1991, a number of cases of threats against certain journalists, clearly with the intention of restricting freedom of expression, were reported. Thus, Hugo Arce, a journalist on the newspaper Siglo Veintiuno, received several telephone death threats after he had started to write articles critical of government policy. He stated that on 4 July 1991, as he was walking in the street, he was approached by two men who threatened him with the same fate as Humberto Gonzalez Gamarra (a journalist and politican murdered in October 1990) unless he stopped criticizing the Government. The following day, he noticed that he was being followed by a vehicle and on 12 July 1991, while driving in his own vehicle with his family, he was threatened with a firearm aimed at him from another vehicle which drew alongside. In addition, at the beginning of 1991, Hugo Arce had been temporarily detained by the police and accused of carrying cocaine and explosives in his vehicle. The charges were never proved, thus suggesting that this was a further form of coercion directed against his work as a journalist.

134. In July 1991 the following legal affairs reporters were assaulted: Juan Carlos Ruiz (of the newspaper Crónica), Hugo Garcia (of the newspaper El Gráfico) and Silvino Velásquez (of the newspaper Prensa Libre). Their briefcases containing their identity papers were stolen, although no items of value were taken. Subsequently, on 12 August 1991, the above journalists, together with radio reporters from the El Independiente and Patrullaje Informativo radio stations received telephone death threats and were specifically questioned about the reasons for their interest in the investigation into the murders of the anthropologist Myrna Mack and Michael Devine, the torture of the nun Diana Ortiz and the trial of Dino Roberto Villalta Valdez, son of the Deputy Minister of the Interior, on charges of alteration of documents and forgery of a judge's signature.

135. On 19 August 1991, the National Police defused an explosive device which had been placed on the ninth floor of the El Centro building located on Seventh Avenue and Ninth Street, Zone 1, Guatemala City. The building housed the offices of the Mexican Press Agency (NOTIMEX), the DPA Press Agency, the periodical Crítica and the Runujel Junam Ethnic Communities Council (CERJ). Shortly after, on 24 August 1991, two unidentified men entered the NOTIMEX offices, asked in a threatening tone to see the correspondents Miguel López and Maricel Dieguez, and searched the agency's files. As a result, the two correspondents left the country the following day.

136. On 28 July 1991, a British journalist, Anson Young, was found dead in his home; he had been shot in the head. He was the correspondent of the Financial Times in Guatemala. Recently, in December 1991, the radio station Guatemela Flash was told that its offices would be blown up if it did not stop broadcasting commercials sponsored by URNG which were directed against impunity and called for the abolition of the civilian self-defence patrols. After having received support from various members of the National Congress, Guatemala Flash continued these programmes. No specific incidents have been reported as yet.

137. In September 1991, the Guatemalan Journalists' Association and nine other press bodies in the country signed a joint communiqué in which they expressed

their concern about "actions that have restricted the exercise of freedom of expression", and stated that in recent weeks threats and intimidation had been directed against several media, journalists and foreign correspondents, thus impeding them in the exercise of their profession. As a result, several foreign correspondents and two international news agencies left Guatemala because of the insecurity and lack of safeguards for their work. The communiqué condemned any actions that restricted the exercise of freedom of expression, and requested the Government to determine where responsibility for the actions against the press lay and to take action against those responsible, so as to guarantee lawful and safe conditions for the practice of journalism in Guatemala.

138. For its part, the fact-finding mission sent to Guatemala by the International Federation of Journalists reached the conclusion that there had been an increase in hostility against journalists, despite the political will expressed by the Government to defend human rights. It also found that there was no investigative journalism in Guatemala, not even by foreign journalists, and in spite of the democratic progress made by Guatemala, self-censorship by journalists had increased in recent months on account of the prevailing "climate of terror". Self-censorship allegedly prevents journalists from criticizing the armed forces, State security, any cases involving corruption or even the drug trade, in which government officials might be involved. Lastly, the sensation of self-censorship also extends to violations of human rights. The conclusions of the mission sent by the International Federation of Journalists highlight the difficulties experienced by local journalists, as their wages are insufficient to provide a living, thereby obliging them to earn money from other sources. According to the report, there are only 25 full-time professional journalists in Guatemala.

D. Judicial protection of rights

139. Throughout 1991 the Expert continued to find evidence of serious flaws in the functioning of the police and judiciary regarding applications for habeas corpus, disappearances, and politically-motivated ill-treatment or threats. In his previous report the Expert already drew attention to the need to enhance the investigative power of the police, to make the work of the Public Prosecutor more effective and to streamline judicial proceedings in criminal cases by reforming the Code of Penal Procedure (see E/CN.4/1991/5, para. 145). Elsewhere in the same report (para. 108), the Expert recalled the recommendations of Mr. Alejandro González Poblete, United Nations adviser in Guatemala during 1989, who had also identified notable shortcomings in the training of the police personnel and magistrates and a lack of activity by the Public Prosecutor's Department. The adviser recommended the establishment within the National Police of a central investigating unit to look into all cases of enforced disappearances, extrajudicial executions and other forms of political crime, including threats and short-term abductions (para. 109). Such a measure would make it possible to consolidate a professional police force to replace the "System for the Protection of Citizens" (SIPROCI), in which military interference is rife. Unfortunately, little has been done to achieve this, apart from the appointment of civilians to the positions of Attorney-General, Minister of the Interior and Director-General of the National Police. It is hoped that they will show greater sensitivity and decisiveness when the time comes to tackle the necessary reforms.

140. In 1991, judicial investigations under way or required in cases of extrajudicial political executions had a similar fate. These investigations again failed to produce the desired results, since in most cases the courts or the security agencies did not succeed in identifying the culprits. In the few cases in which the presumed culprits are identified, no judicial penalty is imposed, thereby allowing the feeling of impunity to persist. It will be recalled that in 1989 Mr. Julio Maier, United Nations adviser in Guatemala, pointed out the need for the Public Prosecutor to take responsibility for criminal prosecution, and hence for preliminary investigations with the help of the police, in order to bring the accused before the courts; on the other hand, judges should give up their function of interrogator and concentrate on their specific role as adjudicators, and on their competence to decide on aspects of the investigation in which guarantees concerning human rights were involved (E/CN.4.1991/5, para. 123). Mr. Maier accordingly advocated reform of the Code of Penal Procedure, which would entail the transformation of the criminal justice system through the introduction of public criminal trials, and entrusting investigation to the Public Prosecutor's Office, while the task of handing down sentences and ensuring observance of personal guarantees should be the responsibility of the judges. Unfortunately, as has already been mentioned, the Code of Penal Procedure reform bill is still before Congress.

141. It is disturbing that in practice the few convictions handed down at first instance in cases of human rights violations have almost always been quashed on appeal, despite the considerable evidence to substantiate the initial convictions. The frequency with which the Courts of Appeal have acquitted persons found guilty at first instance is frustrating for the examining magistrates, as well as for the other authorities, members of non-governmental organizations and victims' relatives, who have striven to elucidate the facts, to identify those responsible and to put an end to impunity. To be sure, the Expert is not in a position to assess the correctness of any judgement rendered by national tribunals. However, it must strike the outside observer as an anomaly that, in cases having a political background, almost no conviction by the trial judge in first instance is upheld on appeal and becomes final. Clearly, with such results, the population has little faith in the proper administration of justice, i.e. in one of the basic pillars of a State governed by the rule of law.

142. An example of this was provided by the murder, in Quetzaltenango in June 1988, of two university students, Danilo Sergio Alvarado Mejía and René A. Leiva Cayax. The judge in the court of first instance sentenced the culprits (the police chief of Quetzaltenango and five other policemen) to 30 years' imprisonment. An appeal was lodged with the Court of Appeal, and in spite of the evidence pointing to the policemen's guilt, the latter Court acquitted them, since when their whereabouts have been unknown.

143. As has already been mentioned, several street children have been the victims of abuse, detention and extrajudicial execution. In the case of Nahamán Carmona Lopez, a 13-year-old boy executed on 4 March 1990 by members of the National Police, four officers were convicted at first instance for the murder. However, on 19 July 1991, the Third Division of the Court of Appeal

dismissed the first-instance judgement on the grounds that "essential procedural formalities" had been violated (regarding the proper determination at the trial of the time of the crime). The Court fined the judge of first instance, and because of an excessive concern with procedure, the case will have to be retried. The charges against the police officers have at least been maintained, and they are consequently still in custody. In other cases of extrajudicial execution of street children, on 4 April 1991 three arrest warrants were issued against the alleged culprits (two policemen and one civilian) in the murder of a boy, Anstraum Amán Villagrán Morales, on 25 June 1990; two of the suspects, a policeman and a civilian, have been arrested although no judgement has yet been handed down in this case. Lastly, in the case of a 13-year-old boy Marvin Oswaldo de la Cruz Melgar, shot dead on 18 May 1990 in Guatemala City, the Fifth Criminal Trial Court ordered the arrest of two former policemen on charges of culpable homicide and concealment. They were sentenced to three years' imprisonment and released on bail; the judge also sentenced them to general disqualification from public office.

144. The Expert has already mentioned the case reported by the Human Rights Office of the Archdiocese of Guatemala concerning the serious injury suffered by Remigio Domingo Salas on 27 June 1990, at the hands of 25 members of the civilian self-defence patrols in Xemal, Colotenango municipality (Department of Huehuetenango). The complaint was lodged by his brother on 4 July 1990 before the Second Court of Investigation in Huehuetenango, case No. 1261-90. So far, although the commander of the civilian self-defence patrols, Alberto Godínez, and other members of the patrols are cited as responsible for the serious injuries suffered by Remigio Salas, no arrest warrants have been issued.

145. The murder, in February 1983, of eight peasants in the village of Tunajá (El Quiché) should also be recalled. A clandestine graveyard was recently found in the vicinity of the village and, at the insistence of the Mutual Support Group (GAM) and relatives, the corpses of several victims were exhumed. Some of them were identified by their relatives. From the very beginning members of the civilian self-defence patrols were the chief suspects. In particular, a judge issued an arrest warrant against patrolman Santos Coj Rodríguez, who was detained in Santa Cruz del Quiché prison, from which he unaccountably escaped.

146. There also appears to be no satisfactory progress in the investigation of the murder of the journalist and politician Humberto González Gamarra, who was shot in Guatemala City on 15 October 1990. The victim was the Secretary-General of the Unión Revolucionaria Democrática (URD) party and the investigation is in the hands of the Seventh Criminal Court of First Instance (case No. 7254-90). According to the victim's relatives and fellow party members, an attempt has been made to attribute responsibility for the murder to two young men (Nery Pineda and Guillermo Benavides), who were killed two days after the murder in a gun battle in Zone 5, Guatemala City. In the opinion of the relatives and fellow party members, the investigation should lead to the identification of the instigators of the crime, which they have no hesitation in describing as political in nature.

147. In his previous report, the Expert mentioned an exceptional case in which the judicial investigation had progressed - that of the investigation into the murder, on 8 June 1990, of the United States citizen Michael Vernon Devine in Poptún (Department of Petén) (see background information in E/CN.4/1991/5, para. 122). In that case the suspects were identified as "collaborators of the armed forces". A military court even tried Captain Hugo Contreras Alvarado and Colonel Guillermo Portillo Gómez for having ordered their soldiers to kidnap and murder the victim. However, in 1991 the court released the first of the accused on bail and the second unconditionally. The Public Prosecutor announced his intention of appealing against the decision.

148. Attention should also be drawn, on account of its exceptional nature, to the government communication relating to the judicial investigations into the disappearance, torture and subsequent murder of Sebastián Velásquez Mejía, who was kidnapped on 6 October 1990 in his village of Chunimá, Chichicastenango municipality (Department of Quiché). His corpse was found two days later, bearing signs of torture. The investigation was directed by the Second Investigating Court of First Instance in Quiché, case No. 192-91. The Quiché district magistrate ordered the arrest of the alleged culprits, who were members of civilian self-defence patrols in Chunimá canton: Manuel Perebal Ajtzalam Tercero and Manuel de León Lares. They were arrested on 29 and 30 July 1991, since when they have been in the hands of the law. The Government also reported that the case had been transferred to the First Criminal Trial Court in Quiché, case No. 99-91. It is expected that a judgement in the case will be handed down on 17 January 1992.

149. The judicial investigation into the political assassination, in Guatemala City in September 1990, of the anthropologist Myrna Mack Chang, a specialist in the problems of displaced persons and peasants, has made laborious progress because of repeated pressure and threats against police officers and judges involved in the investigation. This intimidation culminated, on 5 August 1991, in the murder of José Miguel Mérida Escobar, Chief of the Homicide Section of the Criminal Investigation Department of the National Police, who was leading the murder inquiry (see para. 96 above). Mérida had managed to ascertain that high-ranking military officers were involved in the murder. The competent court issued two arrest warrants, including one against Noel de Jesús Beteta Alvarez, a member of the security forces of the Office of the President of the Republic (under the previous presidency). The suspect was finally located in the United States, from where he was extradited to Guatemala. There is no information regarding the second arrest warrant. As to the murder of Mérida Escobar, the authorities presented Gonzalo Cifuentes Estrada to the media as the alleged culprit. However, the Expert has already drawn attention to the irregularities in Cifuentes' arrest and interrogation (see para. 114 above). The Expert interviewed Cifuentes personally in prison, and was assured by him that he did not know Mérida Escobar and that on the day of the murder he was not even in Guatemala City.

150. In his previous report, the Expert referred at length to the massacre, on the night of 1/2 December 1990, of peasants by military personnel in the vicinity of Santiago Atitlán, Department of Sololá (see background information in E/CN.4/1991/5, paras. 46, 47 and 121, and E/CN.4/1991/5/Add.1, paras. 48-55 and 65). It will be recalled that members of the military detachment in

Santiago Atitlán indiscriminately opened fire with machine-guns on between 1,500 and 2,000 local residents who had assembled in front of the detachment's headquarters to protest peacefully against abuses committed in the town a few hours earlier by a lieutenant. The soldiers shot and killed 13 persons and wounded 17 others. It will also be recalled that in his decision, dated 7 December 1990, the Procurator for Human Rights identified Lieutenant José Antonio Ortiz Rodríguez, Commander of the military detachment, and Sub-Lieutenants Juan Manuel Herrera Chacón and Sergio Julio Maaz Ochoa as responsible for the massacre. The judicial investigation into the massacre came under military jurisdiction, and a judgement at first instance was handed down by the military court of military zone No. 20 in Santa Cruz del Quiché on 9 October 1991: Lieutenant José Antonio Ortiz Rodríguez and Sergeant-Major Efraín García González were found guilty of perpetrating the massacre. The former was sentenced to four years' imprisonment, commutable at the rate of five quetzales per day, for his responsibility for the offences of use of firearms and public intimidation. He has appealed to the appropriate court of appeal. Sergeant-Major Efraín García González was given a 16-year non-commutable prison sentence for the multiple homicides of Pedro Damián Vásquez and 12 other peasants from Santiago Atitlán. The court considered that the crime constituted a "multiple offence", while the Public Prosecutor appealed on the grounds that the crime actually constituted a "series of offences", and that the appropriate prison sentence should be 30 years. Finally, it should be emphasized that Sub-Lieutenants Juan Manuel Herrera Chacón and Sergio Julio Maaz Ochoa, who had been identified as being responsible in the decision of the Procurator for Human Rights dated 7 December 1990, have not been tried by the military court.

151. It will also be recalled that the Expert recommended that immediate redress, including financial compensation, should be accorded to the victims and their families; he also drew attention to the need to proceed with the utmost circumspection before deciding to increase the number of police officers in Santiago Atitlán (E/CN.4/1991/5/Add.1, para. 65). Indeed, the sentence referred to in the previous paragraph mentions compensation for the victims' relatives, and for those wounded in the massacre of 1/2 December 1990. On 11 June 1991, the Minister of the Interior and the Mayor of Santiago Atitlán signed an agreement under which the Minister, who had visited the town two days previously, offered to send to the local police station officer's with a knowledge of the local language (Tzutuil) and respectful of the population's traditions and customs. The Mayor said that his town's population respected the law and expected the authorities to be the first to comply with it, and offered to respect the authority of the National Police and to provide it with all necessary facilities to allow the National Police officers posted to Santiago Atitlán to live decently.

152. The press release issued by the army on 15 August 1991, in which the army specifically states its determination to put an end to impunity, was a truly exceptional development. It reports the arrest of seven officers and men from the Pacific Naval Base, who are accused of the abduction, torture and murder of 11 persons on 9 August 1991 on the Escuintla-Taxisco road; five of the victims were members of the Surveys and Customs Union (see para. 45 above). The following military personnel were arrested: Captain Aníbal Rubén Girón Arriola; Commander Mario García; Infantry Lieutenant Luis P. Alonso Guerra; Reserve Lieutenant Ever A. Galindo López;

specialist Jorge A. González Trujillo; Marine Corporal Gilberto J. Campos Morales; and Marine second-class Tito Martínez Pérez. The press release also states that those arrested had acted without the knowledge of the armed forces.

IV. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. The economic and social situation

153. Guatemala has a population of over 9 million, 80 per cent of whom live in rural areas. This population also contains a large indigenous component (see para. 180 below). The indigenous population is made up of various ethnic groups of Mayan origin, which again are divided into different language groups. There are also "Ladinos", an ethnic group that emerged from intermarriage between the Spanish conquerors and the original population of the country. Article 70 of the 1985 Constitution envisages the preparation of a specific law to regulate matters relating to the advancement and protection of the indigenous communities. The preliminary draft of the indigenous communities bill is being prepared by the Congressional Indigenous Communities Commission, which has in the past received advisory assistance from the United Nations, in the person of Mr. Augusto Willemsen Díaz in this field.

154. Most of the Guatemalan population are poor. The Expert noted in his previous report that poverty affected approximately 85 per cent of the population (E/CN.4/1991/5, para. 60). Of this figure some 54 per cent are estimated to be living in extreme poverty, meaning that they are unable to satisfy their minimum daily food requirements; the remaining 32 per cent are able to satisfy these minimum needs, but not other basic health, housing and education needs. This is due to the poor distribution of wealth and to high rates of unemployment and underemployment, which, according to some sources, affect half the economically active population.

155. As a result of the high poverty rates, it is common to find undernourished people in Guatemala. According to some estimates, 73 per cent of children under five years old suffer from some degree of malnutrition. This is a factor in Guatemala's high overall mortality rate, which is double that of the other Central American countries. According to figures provided by the Procurator for Human Rights in his report on the first six months of 1991, the infant mortality rate among the indigenous population is 76.2 per thousand.

156. Medical, pharmaceutical and hospital care is also inadequate. The Procurator for Human Rights himself estimates that there is only one hospital bed and one doctor per 1,000 inhabitants in Guatemala. The hospital situation was given special attention by the Procurator for Human Rights in 1991. Thus in a decision of 28 February 1991, he referred to the labour conflict in the Guatemalan Social Security Institute, owing to the strike by external consultants in the country's hospitals. The services supplying food and medicines, as well as other basic inputs, were drastically cut back, which endangered the functioning of hospitals. The Procurator noted that there was even a lack of sutures and a shortage of blood in the hospital's blood bank, because of which operations had to be suspended. He described this situation as infringing the right to social security, which all inhabitants of the

country should enjoy and which, as a public service, must be observed by the State, employers and workers. In this specific case, the Procurator stated that the workers' committee of the Guatemalan Social Security Institute had violated its members' right to social security by blocking the provision of obligatory services. The Procurator also publicly censured the authorities of the Guatemalan Social Security Institute for their lack of political will to resolve the conflict (over salary claims) and for not having adopted legal disciplinary measures to avoid a break in the provision of services, to the detriment of contributors.

157. The Procurator for Human Rights also made a statement on public health questions in his decision of 16 December 1991, relating to the continued labour dispute throughout 1991 between resident doctors in the national hospitals and the Ministry of Public Health and Social Welfare. This latest decision referred to the lead taken by public hospital residents in work stoppages over salary claims. In particular, the emergency services at Roosevelt and San Juan de Dios Hospitals were seriously affected between 3.p.m. on 11 December and 7 a.m. on 12 December 1991, during which period over 100 persons were treated, three of whom (including a 13-year-old boy) died owing to shortcomings in services. In this case, the Procurator declared the residents in the above-mentioned hospitals responsible for violating the right to health of social security contributors by causing a break in hospital services. The Procurator also publicly censured the Ministry of Public Health and Social Welfare authorities for not adopting the necessary emergency measures to avoid a break in hospital services.

158. In a decision dated 27 August 1991 the Procurator for Human Rights also made a statement concerning serious deficiencies in the quality of dairy products sold in Guatemala. The Procurator learned that these products were contaminated through the use of vegetable oil and fats instead of their natural protein components; a high rate of contamination by faecal bacteria was also noted in milk, which pointed to deficiencies in its pasteurization process. In his decision, the Procurator attributed responsibility for violating the right to health of consumers of dairy products to the Minister of Public Health and Social Welfare, and the Minister of Crop and Livestock Farming and Food for allowing such contaminated and adulterated products to be manufactured, processed and distributed. He also ordered effective action to be taken to oblige dairy companies to improve the quality of their products.

159. Finally, the Procurator for Human Rights took up problems relating to environmental conservation in his decision of 12 June 1991, which was a consequence of statements by inhabitants of the town of Zacapa (Department of Zacapa) to the effect that a company had been granted a permit to exploit a pine forest in the zone next to the river which provides the communities of Jumuzná and Santa Lucia with their water supply; the villagers were opposed to tree-felling in that area. After the appropriate inquiries had been made the Procurator stated that the people's right to their natural heritage, environment and reforestation had been violated by the Directorate-General of Woods and Forests, which had not ordered the measures required to guarantee the rational use of the forest resources located on the Cumbre de Agua Zarca e Higueral Estate. In short, the Directorate-General had not exercised proper control and supervision over the forest development permit granted.

B. Trade union rights

160. The Expert has closely followed several cases against Guatemala submitted to the Committee on Freedom of Association of the Governing Body of the International Labour Organisation. The first is case No. 1512 arising out of a complaint presented by the International Confederation of Free Trade Unions (ICFTU) to the effect that several trade unionists had suffered death threats, enforced disappearance, torture and violent death, in addition to constant repression of their right to strike and the refusal to grant new unions legal personality. All these allegations constitute serious obstacles to the exercise of trade union rights (see background information in E/CN.4/1991/5, paras. 71 and 72). The Committee on Freedom of Association studied the case again in 1991 and noted once more than no information had been provided on the allegations made by the Confederation. It therefore again urged the Government to carry out independent judicial inquiries into the alleged murder, on 2 July 1989, of a member of the Workers' Union of the Central Bottling Company (STECA) (Coca-Cola), José Orlando Pantaleón whose body was found riddled with bullets and disfigured by torture. The Committee also called for inquiries into: the murder of nine peasants in Alta Verapaz on 22 August 1989; the death of the leader of the teachers' strike, Carlos Humberto Ribera, who had been abducted on 9 September 1989; the murder of Estanislao García y García, a member of the Independent Farm Workers' Union, on 17 September 1989; the murder of José León Segura de la Cruz, General Secretary of the electrical workers' union on 27 September 1989 in the Department of Chiquimula; the deaths of peasants in San Marcos and the Department of El Progreso on 14 and 15 September 1989; and the deaths of peasants in the Department of Quetzaltenango. Regarding the authorities' slowness in granting legal personality to unions, the Committee invited the Government to guarantee workers the right to establish organizations without previous authorization and to guarantee workers' organizations the right to draw up their statutes and internal regulations without the public authorities interfering to restrict that right (278th report of the Committee on Freedom of Association, doc. GB.250/8/13, 250th meeting of the ILO Governing Body, Geneva, May-June 1991, case No. 1512, para. 399). At the following meeting, after hearing the Government's argument that the allegations made could not be attributed to it since it had not taken office until 15 January 1991, the Committee noted that the successive Governments of the same State cannot for the mere reason that a change has occurred, escape the responsibility which could flow from events that occurred under former Governments. Regarding the murders reported, the Committee took note of the proceedings begun and regretted the fact that the military court handling the case of the deaths of the Alta Verapaz peasants had ordered the trial to be suspended due to lack of evidence (279th report of the Committee on Freedom of Association, doc. GB.251/8/11, Geneva, 11-15 November 1991 paras. 657 and 664).

161. In 1991, the Committee on Freedom of Association also studied case No. 1539, arising out of a complaint by the World Confederation of Organizations of the Teaching Profession against the Government of Guatemala. It contained allegations of serious acts of repression and intimidation, including the murder and disappearance of trade unionists belonging to the educational sector and other organizations, death threats against union leaders, reprisals against the Guatemalan Education Workers Union (STEG) and

other union organization for calling a strike on 29 August 1989 in support of wage and professional claims. The Committee deplored the fact that the Government had not responded to the complaint and urged it to make the appropriate inquiries. Regarding the death threats against STEG leaders, including its General Secretary, Werner Miranda Calderon, the Committee deplored those practices and urged the Government to adopt measures to prevent any kind of threat or psychological intimidation of union leaders and members. Regarding the detention of members of the teachers' union who had participated in the strike from May to August 1989, the Committee noted that the right of workers and their organizations to strike was one of the essential means available to them to promote and defend their occupational interests. It also asked the Government for its observations on anti-union discrimination inflicted on the strikers, such as the dismissal of teachers and the financial sanctions imposed on them (278th report of the Committee on Freedom of Association, doc. GB.250/8/13, Geneva, May-June 1991, para. 421). At its following meeting, the Committee pointed out that the Government failed to respond to the reports of death threats against the STEG leaders and invited it to adopt appropriate measures to avoid death threats or other forms of psychological intimidation against union leaders and members. With regard to the detention of the members of the teachers' union who had participated in the May-August 1989 strike, the Committee noted the Government's argument that they had been detained for acts described by law as public order offences, and said it trusted the Government would renounce taking measures of detention in cases of participation in peaceful strikes. Finally, regarding anti-union discrimination against strikers, such as the dismissal of teachers and economic sanctions, the Committee asked whether the dismissed teachers had been reinstated (279th report of the Committee on Freedom of Association, doc. GB.251/8/11, Geneva 11-15 November 1991, para. 664).

162. Regarding events that occurred in 1991, the Expert has already mentioned the 16 December 1991 decision by the Procurator for Human Rights taking up the question of the right to strike of resident doctors in the national hospitals. In that connection, the Procurator noted that article 116 of the Constitution grants State workers the right to strike, but limits its exercise to "the manner prescribed by the law on the matter" and said it "shall in no case affect the maintenance of essential public services" (art. 116, para. 2). Article 4 (c) of Congressional Decree No. 71-86 stipulates that no strike may be organized if it affects the essential services referred to in article 243 of the Labour Code. Among these essential services are those provided by clinical, hospital, public health and sanitation workers; they must furnish the necessary staff to avoid a suspension of such services, leading to serious and immediate harm to health. Noting that this requirement was not met by the residents at Roosevelt and San Juan de Dios Hospitals, the Procurator declared the above-mentioned doctors responsible for denying the right to health of the Guatemalan population, especially those in low-income groups.

163. On another occasion, the Procurator for Human Rights took up the right freely to form occupational associations. In a decision dated 23 July 1991, the Procurator made a statement concerning a complaint he had received from Edgar Ovidio Duarte Gómez and seven other municipal workers who had been the victims of systematic harassment by the mayor of San Pedro Carchá (Department of Alta Verapaz), and by several of the mayor's relatives and friends, aimed

at forcing them to give up membership of the union they had formed. The mayor and his friends even morally and physically attacked the community's justice of the peace, the court secretary, the Assistant Procurator for Human Rights, a journalist and the union adviser. The Procurator accordingly declared that the mayor of San Pedro Carchá, Otto Erwin Gutiérrez González, had been responsible for violating the right of individuals to dignity, integrity and security and the right freely to form trade unions, in particular, and ordered him to cease such violations and reinstate the eight municipal workers in their jobs.

164. In a decision dated 18 April 1991, the Procurator for Human Rights considered the situation of manufacturing plants, especially with regard to health and safety conditions, wages and overtime work. In particular, he stated that Confecciones Océano S.A., Prendas Estrella S.A., Modas del Este S.A. and SM Modas S.A., were responsible for violating their workers' rights to dignity, liberty and physical integrity and their right to work. He found that those companies' working areas did not meet the health and safety standards required to protect the workers' lives and health, since there was an excessive accumulation of heat. He observed that those companies employed many under-age workers, whose workdays were equal in length to those of adult workers, including overtime for which in many cases they were not paid. He further noted that there were Korean employees working in those companies in breach of regulations since they did not have the relevant permits from the Ministry of Labour and Social Welfare. For those reasons, the Procurator publicly censured that Ministry for condoning violation of the human rights of those companies' workers and urged the Ministry to execute the relevant legal measures. Finally, he recommended to the Ministry of the Interior that it should exercise, through the Directorate-General for Migration, effective control over the situation of foreigners who migrated to Guatemala in order to work in those companies.

165. Complaints were made in 1991 of cases of mass and unjustified dismissals which are said to be a means of repression and intimidation of the exercise of trade union rights. Thus workers were forced to resign from the Inmobiliaria Los Estanques company after establishing a union on 4 September 1991; workers from that company have complained of pressure by the court in Antigua Guatemala to force them to drop the suit they had filed against the company. Complaints have also been made of intimidation and death threats against the union's General Secretary, Héctor Oswaldo Hernández López. At the Camisas Modernas company, women assembly-line workers have been dismissed, some forcibly; the company's directors explicitly opposed the establishment of the union. It is alleged that one of its workers, Ana Máxima Rodríguez de Ortega, was murdered recently, although the directors attributed her death to street violence. Dismissals have also been reported in the public sector: in the Ministry of Labour staff members were dismissed from one department where various members of the Trade Union Executive Committee were working.

166. Similarly, in an open letter to the President of the Republic dated 19 August 1991, the Guatemalan Workers' Confederation (CGTG) reported: an attempt to abduct and murder Yolanda Figueroa, General Secretary of the National Customs Union, and threats against José Pinzón and other leaders; the case of Rosendo de León, General Secretary of the National Typographers'

Union; Mauricio Roxcajo, member of the Advisory Council of FENASTEG, who in April 1991 reported cases of official corruption, for which he was physically attacked in June 1991 and was forced to leave the country. It is estimated that over 20 trade unionists have had to leave the country in 1991; some of them have obtained political asylum in Canada and the United States. The foregoing has occurred despite the existence of the Social Covenant, a political body established by a decision of the Council of Ministers on 1 March 1991 aimed at studying, negotiating and formalizing the Covenant as a dynamic instrument for uniting the will of the production sectors represented in the common search for solutions to the country's social problems, as a means of achieving economic and social stability.

167. The ILO Committee of Experts on the Application of Conventions and Recommendations has indicated its concern on finding discrepancies between Guatemala's labour legislation, the Labour Code and the International Labour Conventions to which Guatemala is a party. Thus the Committee noted that various provisions of the Labour Code were not in keeping with the provisions of Convention No. 87 on Freedom of Association and Protection of the Right to Organize: art. 207 (ban on unions taking part in politics); art. 211(a) and (b) (strict supervision of trade union activities); art. 222(f) and (m) (requirement of a majority of two thirds of the members of a trade union in favour of or against a strike); art. 223(b) (limiting eligibility for trade union office to Guatemalan nationals); art. 226(a) (dissolution of trade unions that have taken part in matters concerning electoral or party politics); art. 241(c) (majority of two thirds of workers required in order to call a strike); arts. 243(a) and 249 (prohibiting strikes or work stoppages by agricultural workers at harvest time); arts. 243(d) and 249 (prohibiting strikes or work stoppages by workers in enterprises or services in which the Government considers that a suspension of their work would seriously affect the national economy); art. 255 (providing for the possibility of calling upon the National Police to ensure the continuation of work in the event of an illegal strike); art. 257 (providing for the detention and trial of persons inciting to or participating in a strike that contravenes the provisions of the chapter of the Labour Code relating to strikes and work stoppages); and art. 390 (2) (penalty of one to five years' imprisonment for those who carry out acts intended to cause sabotage or destruction or to paralyse or disturb the functioning of enterprises, with a view to jeopardizing national production) (International Labour Conference, 78th meeting, 1991, report III (part 4A, p. 192).

168. The Committee also pointed out that national legislation should be relaxed in order to enable foreign workers to obtain access to trade union office, at least after a reasonable period of residence. Similarly, trade union members should be permitted to participate in public institutions in order to improve the cultural, economic and social conditions of workers. With regard to the exercise of the right to strike, limitations and prohibitions are only compatible with Convention No. 87 in respect of essential services in the strict sense of the term, in other words, where their interruption would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute national crisis (ibid., pp. 192 and 193).

169. Concerning excessive delay in trade union registration, the Government replied that a bill had been drafted reforming the Labour Code and taking account of all the Committee's observations. The Committee hopes that the final text of the Labour Code will bring national legislation and practice into full conformity with the provisions of Convention No. 87 (ibid., p. 193).

170. Regarding the compatibility of the Labour Code with Convention No. 98 on the Right to Organize and Collective Bargaining, the Committee of Experts has asked the Government to review article 272 (a), which lays down a fine of between 100 and 1,000 quetzales for employers who attempt to make it compulsory for workers to leave or join trade unions so that the sanction will retain its dissuasive nature. Lastly, the Committee expressed its hope that the new Labour Code would provide for sufficiently effective and dissuasive sanctions for all cases of anti-union discrimination (ibid. p. 282).

C. Land use

171. The Expert noted in his previous report that rural life in Guatemala was strongly conditioned by the unequal distribution of land between the minifundios and the latifundios. According to the 1979 census, the minifundios (very small farms or smallholdings) constituted 88 per cent of the farms in the country but accounted for only about 16 per cent of arable land. These minifundios are too small to keep a peasant family fully employed throughout the year, since the great majority of them are located in the least fertile areas of the country. Thus most of the minifundios are unable to produce even enough for their owners to survive (E/CN.4/1991/5, para. 76). Similarly, a study by the United States Agency for International Development clearly showed that 83 per cent of the rural population (some 2 million peasants) did not have an income sufficient to cover their basic needs; of this number, some 41 per cent were unable to satisfy their minimum daily food requirement (1.8 million people were living in extreme poverty). In contrast, the latifundios (multi-family medium-size and large farms) account for huge tracts of best-quality land, and it was calculated that in 1979 they accounted for 2.5 per cent of the country's farms and 65 per cent of arable land (see R. Hough and others, Tierras y Trabajo en Guatemala, Una Evaluación, AID/Washington, 1982, p.76).

172. The structure of land ownership which has been described does not appear to have changed in recent years, although the situation of small farmers may have become more precarious since their number has increased and the size of their holdings has decreased through subdivision or sale. Consequently, there are a large number of economically-active agricultural workers who have no land, especially in the high plateau region where the minifundios are concentrated. That region has also been particularly prone to political violence, which has led to the destruction or abandonment of hundreds of communities and produced 1 million internally displaced persons and some 45,000 refugees who are still living in Mexico.

173. According to the Dean of the School of Agronomy of the University of San Carlos, land ownership in Guatemala is still based on a feudal system comprising both latifundios and minifundios; this fails to meet the basic needs of the great majority of the Guatemalan population, which is made up

of indigenous peasants. According to information from the Human Rights Commission of Guatemala, it is estimated that 500,000 indigenous people come down from the high plateau to the coast, providing inexpensive labour frequently exploited on the latifundios. According to the Peasant Unity Committee (CUC), in January 1991 there were 4 million manzanas of idle land, despite the thousands of peasants who are forced to buy the land at high prices and even to import basic products such as beans to feed themselves. On the occasion of the issuing of 400 title deeds to peasants in Tiquisate and Escuintla in October 1991, the President of the Republic announced that 70,000 more title deeds would be issued over the next five years. Furthermore, in an agreement dated 26 February 1991, the Ministry of Agriculture committed itself to providing the Land Committee with land to sell and to help it obtain easy loan terms and technical assistance under the auspices of the Office of the Secretary to the President of the Republic.

174. The land ownership issue came to the fore again on 5 February 1991, when a group of peasants forming a group called the Southern Land Committee occupied the Olga María estate located in the municipality of Tiquisate (Department of Escuintla). In view of their refusal to leave the estate, on 11 March 1991 members of the National Police arrived at the estate for the purpose of removing them. The peasants resisted because they wished to obtain plots to cultivate and had instituted proceedings with the authorities; they had received a promise that their request would shortly receive favourable attention. Despite that, the National Police, who did not have a proper court order, attempted to remove the peasants and once again met with verbal resistance, after which they proceeded to attempt to remove them by force by beating several of them and destroying some of their belongings, causing even greater opposition by the peasants. The tension culminated in shots being fired by members of the National Police, which caused the death of 22-year-old María del Carmen Anavisca Secaida from a gunshot wound to the head; the policemen then chose to withdraw from the premises, leaving the peasants on the estate. However, the next morning, on 12 March 1991, the security forces again came to the estate, but on that occasion the members of the National Police were accompanied by members of the Military Police Flying Squad and the Treasury Police (SIPROCI), who finally carried out the removal by force, without a court order, by threatening the peasants with their firearms and assaulting several of them. In addition, 35 peasants, including men and women, were arrested and detained in prisons in Escuintla . The Procurator for Human Rights ordered inquiries into these events and concluded in a decision dated 23 April 1991 that Commissioner Rafael Arévalo Arévalo, departmental chief of the National Police in Escuintla who was in command of the police unit on 11 March 1991 when María del Carmen Anavisca Secaida died, had violated the peasants' rights to life, physical integrity and freedom of action. The Procurator also stated that National Police Commissioner Alex Leonel Soto Barillas, Departmental Chief of the National Police in Sacatepéquez, with headquarters in Antigua, was presumed responsible for the death of María del Carmen Anavisca. He found Colonel Felipe Alfonso Ochoa responsible for ordering the combined security forces to remove the peasants by force without a court order on 12 March 1991. In addition, he publicly censured the Colonel, the Chief of the National Police in Escuintla, the Director-General of the National Police and the Minister of the Interior for those events. Lastly, the Procurator warned all persons, organizations or

committees whose purpose is to obtaining land for agriculture or housing to refrain from invading land or using any means outside the law for achieving their ends, so that the legitimate right of ownership would be preserved.

175. The Expert visited the region of Tiquisate (Department of Escuintla) and met peasants from the San José los Tiestos settlement in the municipality of Santo Domingo Suchitepéquez. They told him that 12 years earlier they had occupied the San José los Tiestos estate since it had been abandoned for 4 years: this estate has an area of 28 caballerías and houses some 200 peasant families, averaging five persons per family. They said that they had attempted to legalize their situation and were prepared to buy the estate under the cooperative regime if the National Agricultural Processing Institute (INTA) gave them financial support by facilitating their access to easy loans. They also told the Expert that each family occupies about seven manzanas of land, which is not sufficient to support them all.

176. The Expert then met representatives of the Southern Land Committee, which had played a leading role in February 1991 in the occupation of the Olga María estate, with an area of 17 caballerías and a total of 300 peasant families. The representatives said that they had been requesting permission to occupy the above-mentioned estate for nine years since they were certain that it was not privately owned. After their forcible removal from the farm on 12 March 1991 and after the sad events which culminated in the death by shooting of María del Carmen Anavisca by members of the National Police, the peasants reported that they were still being persecuted. Specifically, they said that María del Carmen Anavisca's parents' farm had been burned and that her husband, Eddy Carmelo Gutiérrez, had had to flee the region together with his five children, since National Police Commissioner Alex Leonel Soto Barillas, who had been tried for shooting María del Carmen Anavisca, had been released on bail. Regarding their own situation, the members of the Southern Land Committee were hoping that the Government would assign them an estate in the region in January 1992, which they would purchase with a loan made available by the INTA.

177. The following day, the Expert visited the President of the INTA, Carlos Enrique Ortega Taracena, at his office in Guatemala City. Mr. Ortega, who had been President of the Institute for eight months, said that it has a budget of 17 million quetzales, which is clearly insufficient to meet the needs of purchasing uncultivated land that can be awarded to landless indigenous peasants. In that connection, he said he had requested from the Government a special fund of 600 million quetzales over the following six years, with which to facilitate land purchase and to lend the necessary technical assistance to indigenous peasants in producing and marketing their products. He also said that the land ownership problem had worsened in recent years, to the detriment of the indigenous peasants because the armed conflict had enabled many landowners and military personnel to gain possession of large quantities of land, taking advantage of the peasants' more or less forcible sales of their plots. The President of the INTA said that the peasants who had occupied the Olga María estate would be relocated to other nearby lands, which they would be able to purchase under a cooperative system through the good offices of the INTA. The Institute would negotiate interest-free loans for them over a 20-year period, at the end of which they would receive the final deed as a collective agrarian asset.

D. Cultural rights

178. Guatemala's population is rich in ethnic and cultural diversity. According to the Human Rights Commission of Guatemala, 60 to 70 per cent of the population is made up of indigenous inhabitants who are descendants of the Mayas, most of them peasants. Since the conquest, this sector of the population has been faced with serious problems of discrimination, marginality and abandonment by the public authorities, which has led to high levels of illiteracy, malnutrition, morbidity, mortality, alcoholism and deplorable living conditions. Those problems were tackled in October 1991 on the occasion of the second meeting of indigenous people in the Hemisphere, entitled "500 years of indigenous and grass-roots resistance". Special attention was given to the violence directly affecting them, which forces them to move and abandon their lands. They expressed their wish for respect for their identity and cultural rights as indigenous persons, and for their various indigenous languages, and to have effective participation in the dialogue under way with Governments for the purpose of achieving lasting peace.

179. The Procurator for Human Rights, on his visits to the various branch offices in the country throughout the first half of 1991, received a sizable number of complaints from indigenous peasants, which reflected the precariousness of respect for human rights in Guatemala. Special emphasis was placed on the lack of education and the persistence of conditions of abandonment for the indigenous minority.

180. In his previous report, already, the Expert referred to the educational situation in Guatemala, citing an average illiteracy rate of 40.2 per cent of the population, but the figure was as high as 59.3 per cent among women in rural areas, according to statistics from the National Socio-Demographic Survey for 1988-1989 (E/CN.4/1991/5, para. 68). This can be explained by the lack of schools, which permanently curtails enrolment at all levels of education, and by the lack of teachers. Although there is a National Bilingual Education Programme (Government Order No. 1093 of 20 December 1984), in fact it does not cover more than 20 per cent of indigenous school-age children. Bilingual education is provided in the four major indigenous languages, i.e. Quické, Cackchiquel, Mam and Kekchi. The Expert has also received complaints to the effect that in areas where there is conflict the army sometimes occupies school premises for its own needs, at the expense of ordinary school activities.

181. The preservation of the cultural rights of the Guatemalan indigenous peoples should be covered in the enactment of legislation to regulate article 70 of the 1985 Constitution, since the article states that there shall be a law establishing regulations relating to indigenous questions, including the protection of ethnic groups of Mayan ancestry. Article 66 of the Constitution stipulates that the State shall recognize, respect and promote their ways of life, customs, traditions, forms of social organizations, the wearing of indigenous costumes by men and women, languages and dialects. As is well known, the Congressional Indigenous Communities Commission is drafting an indigenous communities bill which will implement the programme provided for in article 70 of the Constitution. The United Nations has provided this Commission with an experienced adviser, for the purpose of going ahead as quickly as possible with the drafting of the bill.

V. CONCLUSIONS AND RECOMMENDATIONS

182. The Expert wishes to express his gratitude to the Government of Guatemala for its assistance and cooperation. He was able to talk to everyone he wished to see in order to obtain a full picture of the situation prevailing in the country. Likewise, although with some difficulties (see para. 54 above), he was able to travel to all those parts of the country he had included in his programme of visits. The President personally received him for an extensive conversation, during which he was able to raise all major problems concerning the situation of human rights in Guatemala. Additionally, he met most of the Ministers whose field of competence directly touches upon human rights issues. After his visit to Guatemala, he received further information on recent developments from the President of the Comision Presidencial Coordinadora de la Politica del Ejecutivo en Materia de Derechos Humanos, Mr. B. Neumann.

183. President Serrano has made it unmistakably clear that he does not approve of violence as a means to promote political goals and he has taken a number of constructive initiatives with a view to protecting and strengthening human rights. The crucial problem of Guatemala is to find appropriate ways and means by which such a policy, which is respectful of the human rights of every citizen, can be effectively implemented, and how to enlist the unconditional support of all governmental authorities to that end.

Public insecurity

184. As in recent years, the main feature of Guatemalan society today is still the state of fear in which everybody lives. No significant reduction in the level of violent crime has been observed.

185. The Expert notes with satisfaction that the Government, by appointing to key functions new personalities whose concern for human rights and the rule of law is unchallengeable (Minister of the Interior, General Prosecutor, Head of the National Police), and by making changes in the highest military posts, has shown a praiseworthy attitude that demonstrates its firm determination to stem the tide of crime, although the tangible results of this fresh approach, have not come fully up to expectations. Essentially, it is noted that the Government of Guatemala has made progress in preparing the ground for concrete action in the fight against the de facto principle of impunity.

186. Among the violent crimes committed in 1991, many, in particular disappearances and murders, clearly have a political background. In rural areas, civilian self-defence patrols and military commissioners have become an element of uncontrolled violence which does not fit into the framework of the rule of law. On the other hand, ordinary criminality seems not to have decreased.

187. A number of cases where the culprits could be identified have shown that not only individual members of the national police and the armed forces, but also some units in their entirety have committed grave violations of the right to life and physical integrity of ordinary citizens. In most cases of presumed extrajudicial executions and disappearances, however, conclusive evidence as to the identity of the authors is lacking, although frequently many elements point to the involvement of the security forces.

188. The Government should continue to make it unmistakably clear to its security forces that it does not approve of any unlawful methods in the fight against real or presumed criminals and that full respect is owed to political opponents who make use of their democratic rights in expressing their views. It should review the reliability of the members of the security forces one by one. To permit public control, the organigrams of the national police and the armed forces should be totally open to inspection. Particular care should be devoted to preventing criminal connivance between security forces and private gangs.

Machinery for the prevention and repression of crime

189. With regard to the most serious violations of human rights, those which have put in jeopardy or destroyed human life, the action taken by the national police and the judiciary is still highly unsatisfactory. Many judges have been under serious threat and pressure not only from criminal offenders, but also from local and military authorities. As a result, some of them have resigned and some courts have had to be temporarily closed. Furthermore, the reputation of the judicial system has suffered from allegations of corruption. However, the Public Prosecutor's Office, which will have more modern legislation and greater financial resources at its disposal this year, has already shown a new dynamism, although not many concrete results of its new approach are visible as yet.

190. The efforts to make the national police a professional instrument for the prevention and repression of crime must be continued with vigorous resolve. In order to emphasize the fundamental difference between military tasks, on the one hand, and police tasks, on the other, a strict organizational separation between the armed forces and the national police should be established, police tasks proper, namely combating crime, being exclusively reserved for the national police. In this connection, the "Sistema de Protección Civil" (SIPROCI) should be abolished. The functions currently discharged by SIPROCI may then be assigned to a specialized investigative unit, to be formed within the national police, which should be entrusted with all cases of enforced disappearance, extrajudicial executions and other political crimes. Additionally, police officers should be constantly reminded that their actions must be fully in keeping with the law. For a significant improvement of the trial capacity of the judiciary, the adoption of a new Code of Criminal Procedure by the National Congress is an urgent necessity. Disciplinary supervision of the body of magistrates should be strengthened. Charges of corruption against individual judges must be investigated thoroughly and swiftly.

The Human Rights Procurator

191. The Human Rights Procurator has continued his steadfast and courageous work for the strengthening and upholding of the rule of law in Guatemala. His office is the one institution in Guatemala which enjoys the full confidence of almost all citizens on account of its objectiveness and impartiality. The activities of the Human Rights Procurator should be unrestrictedly supported by the National Congress and the international community.

Other institutions for the promotion and protection of human rights

192. The creation of the Presidential Coordinating Commission on Executive Policy in the Area of Human Rights in July 1991 in response to a recommendation contained in the additional report of the Expert of last year (E/CN.4/1991/5/Add.1, para. 59) is yet another expression of the spirit of cooperation which the Government of Guatemala has manifested in its dealings with the Expert. Through its record of actual achievements, the Commission will have to show the usefulness of its existence.

Civilian self-defence patrols

193. Contrary to what is indicated by the official name of the Voluntary Civilian Self-defence Committees, many inhabitants of the rural areas continue to be compelled to join the ranks of what are in fact patrols, which have become an institutionalized element of uncontrollable violence. In keeping with the provisions of the Guatemalan Constitution (art. 34 (2)), the civilian self-defence patrols should be abolished forthwith. On the other hand, the guerrilla forces should refrain from turning such a structural reform to their military advantage.

Organizations for the protection and promotion of human rights

194. The many organizations for the protection and promotion of human rights which have sprung up in Guatemala since the entry into force of the Constitution in 1985 constitute a natural element of a free and democratic society. Attacks and threats against members of these organizations, which are still current, constitute an assault on the core values of a liberal democracy. The Government should not only tolerate the activities of such organizations, but should encourage and protect them in order definitively to transform Guatemala into a society in which the principle of equality of citizens in all fields, in particular in the political field, is fully guaranteed.

Economic and social rights

195. Real enjoyment of social and economic rights has made little progress in 1991. The high rate of infant mortality, due to malnutrition, and the poor equipment of most hospitals continue to give rise to serious concern. Illiteracy of large segments of the population, in particular indigenous people and women in the rural areas, is still a feature of Guatemalan society. The blatant inequality is due to a policy of neglect practised over a long period in the past. The creation of many new posts for teachers under the 1992 budget is an encouraging sign. Protective labour legislation is widely disregarded by employers. Many employers do not pay the minimum wage fixed by law. Generally, workers are unable to enforce their claims through the judicial system. In the private sector, in particular in the textile industry, pressure exerted by employers gravely hampers trade union activities.

196. The Expert wishes to express his satisfaction at the redistribution of expenditure in the national budget, a suggestion he made in his previous report (E/CN.4/1991/5, para. 153), with increased appropriations for education and health, which constitute a long-term investment designed to consolidate

the country's well-being. These appropriations should continue to be gradually increased. Guatemala needs a comprehensive programme of education which sets out in detail how, within a few years, compulsory elementary education can be ensured for every child. The Government must take appropriate steps to ensure compliance with the labour legislation in force, in particular concerning the minimum wage and trade union freedom. The Expert also notes that the Government has established a National Fund for Peace (FONAPAZ), with the aim of planning and implementing development programmes in the zones of conflict.

Indigenous populations

197. The indigenous populations of Guatemala suffer most from the many encroachments on the rule of law and the weakness of the state machinery in rural areas. Although they constitute by far the majority of the population of Guatemala, the role which they play in public life does not carry the weight to which they are entitled according to democratic principles. It is gratifying to note that the National Congress has included in the budget for 1992 an allocation of 5 million quetzales so that the Academy of Maya Languages will be able to launch its first activities.

198. Bridging the gap between the ladino and the indigenous communities will for decades be the central issue of domestic policies in Guatemala. Given its traditional attitude of ignoring the concerns of the indigenous communities, the State of Guatemala has a specific responsibility. The land rights as well as the linguistic rights of the indigenous groups deserve more attention than they have received in the past. The initiative of drafting a law setting forth the rights of the indigenous populations should be actively pursued. The Government should consider the creation of a Ministry for Indigenous Affairs, which could act as a political support and coordination centre for the specific interests of the indigenous communities. The national authorities of Guatemala may wish to host in 1992 the regional training course on the United Nations, human rights and indigenous peoples requested by the Commission on Human Rights in its resolution 1991/59.

The democratic process

199. The democratic process has been consolidated. Guatemalan society as a whole has understood that the country's many problems cannot be resolved by military means. True democracy, however requires that all political options, of whatever tendency, be free in law as well as in practice to manifest their opinions and to present candidates for public office. Political movements to the left of the centre still experience major difficulties in being recognized as fully legitimate actors on the political stage.

200. The democratic process must be enlarged and intensified to involve all sectors of Guatemalan society, including those which until now have not been represented by the existing political parties. All discriminatory language which stigmatizes political opponents of the Government ("subversives", "foes of the State") should be avoided and disappear from the official vocabulary. The Government must make it clear, by its words and by its deeds, that it accepts and welcomes political pluralism as a matter of principle.

Freedom of expression

201. In 1991, freedom of expression has come under serious pressure through attacks against journalists working for the print and electronic media. All competent public authorities, including the judiciary, should do their utmost to protect freedom of the press as an essential condition for a free and democratic society.

The armed forces

202. In their fight against the guerrillas, the armed forces, according to many reports, have continued to attack settlements of groups calling themselves "Comunidades de población en resistencia". Major uncertainties surround their attitude vis-à-vis guerrilla fighters taken prisoner. Given the absence of precise regulations, the drafting system is in a state of anarchy which gravely violates the basic tenet of equality before the law. In 1991, on several occasions it emerged that members of the armed forces were involved in disappearances and arbitrary killings, while in many other instances strong clues pointed to their involvement. Changes in the command structures decided at the end of the year raise hopes that the armed forces may enter more fully into the institutional framework of a democratic State.

203. The army must profoundly revise the strategies which it employs in combating the guerrilla forces of URNG so as not to harm the civilian population in the disputed areas. It should openly and responsibly clarify what treatment it accords to guerrilla fighters taken prisoner. In no circumstances may such a defenceless person be killed. Generally, the army should agree to publicize and review the rules of combat it has issued to its forces concerning the fight against the guerrillas. These rules should be harmonized with the generally accepted humanitarian standards of warfare.

204. A law on the enlistment procedures for military service is an urgent necessity and a corresponding bill should be submitted to the National Congress for approval in the course of 1992.

205. Civilian control of the armed forces by the Government must be upheld and strengthened. Every single soldier should be made aware and reminded of the philosophy of a democratic State, whose sole justification is to serve the interests of its citizens. The Minister of Defence should review all control mechanisms in order to make sure that at no command level can security strategies departing from superior orders be pursued. No paramilitary groups and no clandestine prisons should be permitted to exist or operate.

The guerrilla forces

206. On several occasions in 1991, forces under the command of URNG acted in a manner incompatible with basic humanitarian standards of warfare. The leaders of the guerrilla forces should prevail on their fighters to respect generally accepted standards of warfare. Soldiers of the armed forces hors de combat must not be killed. In no circumstances should infrastructure such as bridges or electric power lines be destroyed.

The negotiations between the Government and URNG

207. It is gratifying to note that the Government and URNG met in 1991 to conduct direct negotiations on conditions for a peace settlement. Both sides deserve praise and gratitude for that decision. Therefore, it is all the more alarming that the negotiating process was seriously affected by the disagreement which emerged at the meeting in Mexico in October 1991. Both sides should make full and extensive use of the "pendulum" formula agreed upon to continue the negotiations with the assistance of the Conciliator and the Secretary-General's Representative. With a sufficient degree of flexibility, abandoning dogmatic positions and searching together for practical solutions, it should be possible to overcome the current difficulties. In the interest of the people of Guatemala, the parties should aim at concluding the negotiations by the end of 1992 at the latest.

Human rights education

208. In the field of human rights education, first initiatives have been taken. These should be continued. In particular, the security forces should, as a regular part of their training, receive precise and detailed information about the minimum guarantees for those against whom they have been given orders to act. The recommendations contained in the previous report (E/CN.4/1991/5, para. 162) are maintained.

Refugees and displaced persons

209. It is encouraging that concrete preparations have begun for repatriating the refugees presently living in Mexico within a relatively short time. On the other hand, the situation of the Comunidades de población en resistencia (CPR) is still largely unsatisfactory in that members of these communities are denied almost all the rights to which every Guatemalan citizen is entitled under the Constitution. Preparations for the return of the refugees will be intensified in accordance with the agreement between the Government of Guatemala and the Office of the United Nations High Commissioner for Refugees.

210. The Government of Guatemala is under a duty radically to alter its treatment of the Comunidades de población en resistencia (CPR). The persons belonging to these communities must be accepted as full members of national society with equal rights, notwithstanding the difficulties arising from the guerrilla activities in the areas concerned.

International human rights instruments

211. In 1991, the Government of Guatemala, following the recommendation expressed by the Expert in his previous report (E/CN.4/1991/5, para. 164), withdrew its reservation to the Inter-American Convention to Prevent and Punish Torture. The Expert again urges the Guatemalan authorities to ratify the International Covenant on Civil and Political Rights and the Optional Protocol thereto. Adoption of these two instruments by the National Congress should be delayed no longer.

Advisory services

212. If the Commission on Human Rights should decide to continue providing advisory services to Guatemala at the Government's request, a human rights officer could be permanently posted in Guatemala, within the framework of UNDP or UNHCR. Independently of any monitoring body that might be agreed upon between the Government and URNG in an integrated peacekeeping operation, such a human rights officer could serve as a coordinator between the national authorities and the Expert and the Centre for Human Rights, in order to assist in all programmes requested by the national authorities in the field of human rights. In particular, the human rights officer could:

(a) Assist the national authorities in the preparation of periodic reports under the United Nation human rights conventions, as well as United Nations extraconventional special procedures;

(b) Assist Mr. A. Willemsen Diaz in his capacity as consultant with the National Congress (Commission on Indigenous Communities) with a view to assisting it in formulating a specific legal regime for the indigenous populations;

(c) Assist the new consultant who should be sent to Guatemala to review with the national police and the armed forces all manuals used for training their personnel in order to ascertain whether these manuals take account of the generally accepted United Nations standards;

(d) Assist the new consultant who should be provided to Guatemala with a view to adjusting the military Code, Second Part (Code of Criminal Procedure), to the requirements of the International Covenant on Civil and Political Rights; and

(e) Coordinate technical assistance that should also be provided to the Office of the Human Rights Procurator in the teaching of human rights and international procedures for the protection of human rights.

The aftermath of the tragic events of Santiago Atitlán

213. The proceedings initiated against the alleged perpetrators of the massacre at Santiago Atitlan ended with the conviction of two persons, an army Sergeant-Major and a lieutenant, and their sentencing to 16 and 4 years of deprivation of liberty respectively. Insufficient material assistance has so far been provided to the victims. Immediate redress, including financial compensation, should be accorded to the victims and their families. Those who were left wounded should receive adequate medical treatment so that they can recover their health to the extent possible.

Protection of members of societal organizations

214. Some members of societal organizations who attended the session of the Commission on Human Rights last year were harassed after their return to Guatemala. They were interrogated about their activities in Geneva, and in some cases they received death threats. Since it is a natural right for every

person, granted by the principles embodied in the Charter of the United Nations, to follow the work carried out by the Commission on Human Rights, the Government of Guatemala must do everything in its power to protect that right (see also Commission on Human Rights resolution 1991/70.).

Further action by the Commission on Human Rights

215. The Expert recommends that the Commission on Human Rights should continue to observe the situation of human rights in Guatemala in the manner it may deem appropriate, taking into account the elements which the present report has attempted to highlight.

VI. FINAL OBSERVATIONS

216. The people of Guatemala have become impatient. Rightly and understandably, the majority of the population refuse to accept the prevailing state of fear as the natural condition of the country. Few believe that resort to violent means can bring about solutions to the many economic and social problems. After a peace settlement has been reached in neighbouring El Salvador, the longing for peace and social justice must become even stronger. Until the armed conflict comes to an end, huge amounts of public money will be spent for military purposes, money which is badly needed to rebuild the health and education systems.

217. An agreed peace settlement would at the same time send the message to Guatemalan society that opening up new avenues towards social progress through dialogue and compromise is not just wishful thinking. As the level of violence in military clashes declines, so will the general level of criminal violence also undoubtedly decline. Once the armed conflict is terminated and URNG is integrated into the political system of the State as a counterweight to the prevailing right-wing and centre forces, the institutions of the State will gain a more broadly-based legitimacy as the expression of the people as a whole. This renewed and strengthened legitimacy will also facilitate efforts to combat ordinary crime.

218. Guatemalans, after decades of fighting, the lethal consequences of which have hardly left any family without victims, will have to embrace a political culture of mutual tolerance and trust. To be sure, the past should not be forgotten. What happened during 30 years cannot become a taboo. However, an attempt should be made to translate the feelings of mourning and frustration not into acts of revenge, but into constructive strategies for peaceful cooperation between all sectors of the population. What is needed in the first place is to create conditions which permit everyone to enjoy basic human rights, economic and social, as well as civil and political rights. Efforts to shape such a new society will be all the more successful if everyone, regardless of his or her ethnic origin, sex or status of wealth, is certain of being treated in full equality as a member of the national community. Although the State cannot attain these objectives through its actions alone, it is within its power to provide equal protection to everyone and to allocate social investment fairly, taxing incomes at levels commensurate with social needs and seeing to it that the most disadvantaged groups of the population, mostly the indigenous communities, are given equal chances in the development of Guatemalan society.

219. Although, on account of its manifold natural resources, Guatemala could be termed a rich country, these resources are insufficiently developed. The existing deficiencies must be attributed mainly to the fact that a large percentage of the population lacks the elementary qualifications for efficient participation in the economic process. Over the coming years, Guatemala will have to make huge social investments to face up to the demands of its young people, who rightly lay claims to education, housing, health and employment. Without the assistance of friendly countries, Guatemala can hardly hope successfully to deal with all these problems. The international community should not deny its solidarity to Guatemala.

220. It is obvious, however, that for most countries which show a sincere interest in Guatemala and its citizens, human rights is a key issue on which they make their assistance dependent. The same goes for private investors. As long as a climate of insecurity and fear subjugates the country, foreigners will be reluctant to commit themselves in a constructive manner by creating industries and not merely subsidiaries for the sale of goods produced abroad. Thus, human rights has many facets which determine the future development of Guatemala. In the first place, their enjoyment or denial vitally affects the life and wellbeing of all citizens. Additionally, however, human rights shape the general framework within which Guatemalans have to live. Genuine enjoyment of human rights, is not only the final result of, but also the precondition for, economic, social and cultural development.

Annex

PROGRAMME OF WORK OF THE EXPERT DURING HIS THIRD MISSION TO GUATEMALA
(including activities in New York)

Date	Places visited and persons interviewed
30/9/1991	New York
	Ambassador Francisco Villagrán, Permanent Representative of Guatemala to the United Nations in New York
1/10/1991	Representatives of non-governmental organizations: Americas Watch International League for Human Rights Amnesty International
2/10/1991	Guatemala City
	Monsignor Rodolfo Quezada Toruño, President of the National Reconciliation Commission
3/10/1991	Mr. Gustavo Espina, Vice-President of the Republic, and
	Mr. Sergio Mollinedo, Chairman of the Ad Hoc Committee for Aid to Returnees (CEAR)
	Gen. Luis Enrique Mendoza, Minister of National Defence
	Mr. Jorge Arenas Menes, Vice-Chairman of the Congressional Foreign Affairs Committee and Head of the UCN Party
	Dr. Alfonso Fuentes Soria, Rector of the University of San Carlos and Mr. Cipriano Soto, Dean of the Faculty of Legal Science, together with other members of the University Board of Governors
4/10/1991	Mr. Ramiro de León Carpio, Procurator for Human Rights, accompanied by his two Assistants
	Mr. Daniel Saxón Antillón and Mr. Fernando López Antillón, members of the Human Rights Office of the Archdiocese of Guatemala
	Mr. César Augusto Villela, Vice-Minister of the Interior and Mr. Marco Antonio Sagastume Gemmell, Ministry adviser
	Mr. Alvaro Colom Caballeros, Executive Director of the National Fund for Peace (FONAPAZ)
5/10/1991	Visits to prisons
	Pre-trial Detention Centre, Zone 18, Guatemala City. Interview with detainee Gonzalo Cifuentes Estrada

Date	Places visited and persons interviewed
	Pavón Prison Farm. Interview with governor, Rolando Ramírez and tour of facilities
	Pavoncito Constitutional Rehabilitation Centre. Interview with detainees Francisco Castillo García, Carlos Rosales Chaves and Exequiel Trujillo Hernández
	Guatemala City
	Mr. Factor Méndez, Director of the Centre for Human Rights Research, Study and Promotion (CIEPRODH)
6/10/1991	Visit to Taxisco and Tiquisate
	Accompanied by Mr. César Alvarez Guadamamuz, Assistant Procurator for Human Rights (acting for the Procurator)
	Taxisco
	Father Francisco Nicolás Mateos, San Miguel Arcángel Parish
	Tiquisate region
	San José los Tiestos settlement, municipality of Santo Domingo (Department of Suchitepéquez)
	Mr. Héctor Calderón Solís, Deputy Mayor of the settlement
	Representatives of the Land Committee
	Representatives of the Southern Land Committee
	Former occupants of the Olga María and San Pablo Miramar estates
	Flight over area damaged by the earthquake on 18 September 1991 (Pochuta)
7/10/1991	Guatemala City
	Mr. Edmundo Vásquez Martínez, President of the Judicial Branch
	Col. Marco Antonio Castellanos Pacheco, Director of the Treasury Police
	Mr. Carlos Enrique Ortega Taracena, President of the National Agricultural Processing Institute (INTA)
	Mr. Jean-Pierre Givel, Representative of the International Committee of the Red Cross (ICRC)

Date	Places visited and persons interviewed
	Colonel Mario Enrique Paiz Bolaños, Director of the National Police
	General José Domingo García, Deputy Chief of Staff for National Defence
8/10/1991	Mr. Mario Solórzano, Minister of Labour
	Congressmen Roberto Stein and Marco Antonio Reyes Riveiro, members of the Congressional Human Rights Commission
	Ms. Catalina Soberanis, President of Congress
	Mr. Manuel Villacorta, Vice-Minister for Foreign Affairs
	General Marco Antonio González Taracena, Director of Military Intelligence (G-2)
	Mr. Everardo Ramírez Yat and Mr. Miguel Angel de la Cruz Ponce, members of the Congressional Indigenous Communities Commission
	Mr. Manuel Conde Orellana, General Secretary to the Office of the President, President of the Commission for a National Dialogue (governmental), and Commission advisers
9/10/1991	Mr. Jorge Serrano Elías, President of the Republic
	Mr. Bernardo Neumann, President, and members of the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH)
	Joint meeting with:
	Mr. Ricardo Tichauer, Resident Representative of UNDP
	Mr. Roberto Rodríguez, representative of the Office of the United Nations High Commissioner for Refugees (UNHCR)
	Mr. Juan Pablo Corlazzoli and Mr. Antonio Cruciani, of the UNDP Programme for Displaced Persons, Refugees and Repatriated Persons (PRODERE Guatemala)
	Joint meeting with representatives of the following Guatemalan non-governmental organizations:
	Ms. Nineth de García, Ms. Adela Tujal and Mr. Tomás Chumil of the Mutual Support Group (GAM)
	Mr. Douglas Mazariegos, Mr. Otto Peralta and Mr. Víctor Gudiel of the Association of University Students (AEU)

Date	Places visited and persons interviewed
	Mr. Factor Méndez and Ms. Ester Caballero of the Centre for Human Rights Research, Study and Promotion (CIEPRODH)
	Mr. Ramón Rodríguez of the Federation of Food Workers (FESTAS)
	Mr. Gabino Quemé of the non-governmental Human Rights Commission
	Mr. Tránsito Ortiz, Mr. Juan Loarca and Mr. Lorenzo Pérez of the National Council of Displaced Persons of Guatemala (CONDEG)
	Mr. Moisés Fuentes of the Education Workers' Union
	Mr. Juan Manuel José Catalán Estrada and Ms. Nuria Monge of the Federation of State Workers (FUGSTED)
	Mr. Romeo Monterrosa and Mr. Juan Mateo of the Trade Union and Grass-Roots Action Unit (UASP)
	Ms. María Tuyuc and Ms. Sebastiana Morales of the Guatemalan Widows' National Coordinating Committee (CONAVIGUA)
	Mr. Miguel Sucuquí and Mr. Manuel Mejía of the "Runujel Junam" Ethnic Communities Council (CERJ)
	Mr. Virgilio García of the Comunidades de Población en Resistencia (CPR)
10/10/1991	Visit to Playa Grande, Amachel, Cabá and Cobán
	Accompanied by Mr. César Alvarez Guadamuz, Acting Procurator for Human Rights
	Playa Grande
	Interview with the chiefs of the military base
	Amachel (municipality of Chajul)
	Interview with the mayor, Mr. Antonio Bernales, and other villagers who came to the school spontaneously
	Aldea Cabá (municipality of Chajul, Department of Quiché)
	Interview with representatives of the Coordinating Committee of the Comunidades de Población en Resistencia de la Sierra
	Cobán (capital of the Department of Alta Verapaz)
	Interview with Monsignor Gerardo Flórez, Bishop of Cobán, his staff, and the Deputy Procurator for Human Rights

Date	Places visited and persons interviewed
11/10/1991	Guatemala City
	Monsignor Próspero Penados del Barrio, Metropolitan Archbishop of Guatemala
	Mr. Ronald Ochaeta, Mr. Daniel Saxón and Mr. Fernando López of the Human Rights Office of the Archdiocese of Guatemala
	Ms. María Eugenia de Monterroso and Mr. Raúl Toledo, representatives of the Casa Alianza Association
	Mr. Federico A. Polá, Secretary-General of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF)
	Directors of the Institute for the Advancement of the Social Sciences (AVANCSO)
	Relatives of Myrna Elizabeth Mack Chang
	Mayor and representatives of the Security Committee of Santiago Atitlán
	Representative of the International Peace Brigades
	Representatives of the National Teachers' Association
	Representatives of the Unión Revolucionaria Democrática political party
	Joint meeting with representatives of the following trade unions: Confederation of Guatemalan Workers (CTG); Guatemalan Workers' Union (UNITRAGUA); Guatemalan Education Workers' Union; Labour Foundation and Guatemalan Trade Union Confederation (CUSG)
	B. Neumann and A. Arenales, directors of the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH) (second interview)
12/10/1991	General Marco Antonio González Taracena, Director of Military Intelligence (G-2), and General José Domingo García, Deputy Chief of Staff for National Defence (second interview), accompanied by two air force officers
	Mr. Acisclo Valladares, Attorney-General of the Nation
	Mr. Fernando Hurtado Prem, Minister of the Interior, and Mr. Marco Antonio Sagastume Gemmell, Ministry adviser
	Press conference

Date	Places visited and persons interviewed
8/11/1991	New York
	Meeting with Mr. Raúl Molina, Mr. Franc LaRue and Ms. Rigoberta Menchú, representatives of the Unitary Representation of the Guatemalan Opposition (RUOG)
	Mr. Francisco Villagrán, Permanent Representative of Guatemala to the United Nations in New York
	Ms. Luz Méndez, representative of the Guatemalan National Revolutionary United Front (URNG) in New York

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